

## **PNOC-ENERGY DEVELOPMENT CORPORATION (PNOC-EDC), PETITIONER, VS. EMILIANO G. VENERACION, JR., RESPONDENT.**

*G.R. NO. 129820. November 30, 2006*

Ponente: CHICO-NAZARIO, J.

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### **CHICO-NAZARIO, J.:**

This is a Petition for Review on Certiorari, under Rule 45 of the Rules of Court, seeking to set aside the Order, dated 21 May 1997 issued by the Mines Adjudication Board (MAB) of the Department of Environmental and Natural Resources (DENR),<sup>[1]</sup> declaring that the respondent Emiliano Veneracion has a preferential right over the contested Block 159.

This case involves the conflicting claims of the petitioner Philippine National Oil Corporation-Energy Development Corporation and the respondent over the mining rights over Block 159 of the Malangas Coal Reservation, Alicia, Zamboanga del Sur.

On 31 January 1989, respondent applied with the Mines and Geo-Sciences Development Services, DENR, Region IX, Zamboanga City for a Declaration of Location (DOL) over Block 159 of the Malangas Coal Reservation, situated at Barangays Payongan and Kauswagan, Alicia, Zamboanga del Sur. On 18 May 1989, the Office of the Regional Executive Director (RED) of the DENR informed the respondent that his DOL cannot be registered since Block 159 was part of the Malangas Coal Reservation, as provided under Proclamation No. 284, issued by the President on 19 July 1938.<sup>[2]</sup> With the endorsement of the Office of Energy Affairs (OEA) and the DENR Secretary, the respondent petitioned the Office of the President for the withdrawal of Block 159 from the coal reservation and its conversion into a mineral reservation.<sup>[3]</sup>

The petitioner applied for a mineral prospecting permit over Block 159 (and Blocks 120 and 160) with the OEA, which the latter granted on 4 September 1989. The Malangas Coal Reservation was, at that time, under the administration of the OEA.<sup>[4]</sup> When it had initially applied for a mineral prospecting permit over lands within the Malangas Coal Reservation, the OEA advised it to obtain the permission of the Bureau of Mines and Geo-Sciences (BMGS).<sup>[5]</sup>

On 18 October 1991, petitioner submitted to the DENR an application/proposal for a Mineral Production Sharing Agreement (MPSA) over Blocks 120, 159 and 160 of the Malangas Coal Reservation.<sup>[6]</sup>

On 21 February 1992, the Officer-In-Charge Regional Technical Director Dario R. Miñoza of the Mines and Geo-Sciences Developmental Service (MGDS) advised the petitioner to amend its application for MPSA by excluding Block 159 as the same is covered by the application of the respondent.<sup>[7]</sup> Nevertheless, the petitioner did not exclude Block 159 from its MPSA. Records also show that it had not applied for nor was it able to obtain an Exploration Permit from the BMGS over Block 159.

On 13 April 1992, Presidential Proclamation No. 890 was issued, which effectively excluded Block 159 from the operation of Proclamation No. 284, and declared Block No. 159 as government mineral reservation open for

disposition to qualified mining applicants, pursuant to Executive Order No. 279.[8]

On 26 May 1992, petitioner's application for MPSA covering Coal Block Nos. 120, 159 and 160 was accepted for filing.[9] Respondent immediately filed, on 28 May 1992, a protest to the petitioner's inclusion of Block 159 in its application for MPSA before the RED of the DENR Office in Zamboanga City.[10]

After the parties were heard, the RED, in an Order, dated 12 April 1993, ruled in favor of the respondent and ordered the petitioner to amend its MPSA by excluding therefrom Block 159.[11] On 18 May 1993, petitioner filed a Motion for Reconsideration of the Order dated 12 April 1993,[12] which the RED denied in an Order dated 5 July 1993.[13]

On 30 July 1993, petitioner filed an appeal with the DENR Secretary questioning the Orders issued by the RED.[14]

While the case was pending, respondent applied for a MPSA. On 31 July 1992, he paid the processing fee for a MPSA covering Block 159 and was able to comply with all other requirements of the MPSA application.[15]

On 4 October 1994, the Office of the Secretary dismissed the appeal on the ground that petitioner's right to appeal had already prescribed.[16] Section 50 of Presidential Decree No. 463 provides therefore for a five-day reglementary period from the receipt of the order or decision of the Director.[17] Petitioner received its copy of the assailed Order dated 12 April 1993 on 7 May 1993, but filed its Motion for Reconsideration only on 18 May 1993, or eleven days after its receipt thereof. Thereafter, petitioner received a copy of the Order dated 5 July 1993 on 16 July 1993, but filed its appeal only on 30 July 1993 or nine days after the allowable period to appeal.

On 25 October 1994, petitioner, through a letter addressed to the DENR Secretary, sought the reconsideration of the Decision, dated 4 October 1994.[18] In a Resolution, dated 21 December 1994, the then DENR Secretary Angel C. Alcala reversed the Decision, dated 4 October 1994, and gave due course to the MPSA of the petitioner.[19]

On 1 February 1995, respondent filed a Motion for Reconsideration of the Resolution, dated 21 December 1994.[20] The now DENR Secretary Victor O. Ramos issued an Order, dated 5 August 1996, reversing the Resolution, dated 21 December 1994 and reinstating the Decision, dated 4 October 1994. It ruled that the Orders issued by the RED have already become final and executory when the petitioner failed to file its appeal five days after it had received the Orders. As a result, the DENR Secretary no longer had the jurisdiction to issue the assailed Resolution, dated 21 December 1994. It added that after looking into the merits of the case, the Orders of the RED were in accordance with the evidence on record and the pertinent laws on the matter.[21]

On 20 August 1996, petitioner filed a Motion for Reconsideration of the Order, dated 5 August 1996. On 21 May 1997, the MAB resolved the motion in favor of the respondent and affirmed the assailed Order, dated 5 August 1996.[22] It took cognizance of the appeal filed by petitioner, in accordance with Section 78 of Republic Act No 7942, otherwise known as The Philippine Mining Act of 1995.[23] The MAB ruled that the petitioner filed its appeal beyond the five-day prescriptive period provided under Presidential Decree No. 463, which was then the governing law on the matter.

The MAB also decreed that the respondent had preferential mining rights over Block 159. It ruled that the proper procedure with respect to the mining rights application over Block 159 when it was still part of the Malangas Coal Reservation required the following: (1) application for prospecting permit with the OEA or other office having jurisdiction over said reservation; (2) application for exploration permit; (3) application for exclusion of the land from such reservation; (4) Presidential Declaration on exclusion as recommended by the Secretary; and (5) application for Lease thereof with priority given to holder of exploration Permit.

The MAB noted that petitioner did not file for an exploration permit nor applied for the exclusion of Block 159. Moreover, petitioner filed a MPSA on 18 October 1991, or almost six (6) months prior to the issuance of Proclamation No. 890 excluding Block 159 from the Malangas Coal Reservation and allowing its disposition. Thus, the application for a MPSA over Block 159, while it was still part of a government reservation other than a mineral reservation, was erroneous and improper and could not have been legally accepted. And, since the records show that only one MPSA was filed after the issuance of Proclamation 890 – that of the respondent's, the preferential right over Block 159 was acquired by the respondent. The MAB, nevertheless, pointed out that the said preferential right does not necessarily lead to the granting of the respondent's MPSA, but merely consists of the right to have his application evaluated and the prohibition against accepting other mining applications over Block 159 pending the processing of his MPSA.

Hence, this Petition for Review on Certiorari.

The correct mode of appeal would have been to file a petition for review under Rule 43, before the Court of Appeals. Petitioner's reliance on Section 79 of the Philippine Mining Act of 1995 is misplaced.[24] Republic Act No. 7902 expanded the appellate jurisdiction of the Court of Appeals to include:

Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions x x x except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

With the enactment of Republic Act No. 7902, this Court issued Circular No. 1-95 dated 16 May 1995 governing appeals from all quasi-judicial bodies to the Court of Appeals by petition for review, regardless of the nature of the question raised. Said circular was incorporated in Rule 43 of the Rules of Civil Procedure.[25] In addition, this Court held in a line of cases that appeals from judgments and final orders of quasi-judicial bodies are required to be brought to the Court of Appeals, under the requirements and conditions set forth in Rule 43 of the Rules of Civil Procedure.[26] Nevertheless, this Court has taken into account the fact that these cases were promulgated after the petitioner filed this appeal on 4 August 1997, and decided to take cognizance of the present case.

There are two main issues that need to be resolved in this case: (1) whether or not the petitioner has already lost its right to appeal the RED's Order dated 12 April 1993; and (2) whether or not the petitioner acquired a preferential right on mining rights over Block 159.

This Court finds no merit in this Petition.

Petitioner alleges that Section 61 of Commonwealth Act No. 137[27] governs the petitioner's appeal of the Orders, dated 12 April 1993 and 5 July 1993, and not Section 50 of Presidential Decree No. 463. He further adds that even if Presidential Decree No. 463 was applicable in this case, his appeal should have been allowed on grounds of substantial justice.

When Presidential Decree No. 463 was enacted in 1974, Section 50 of the law had clearly intended to repeal the corresponding provision found in Section 61 of Commonwealth Act No. 137, and to shorten the 30-day period within which to file an appeal from the Decision of the Director of Mines and Geo-Sciences to five days. Section 61 of Commonwealth Act No. 137, as amended, provides that:

SEC. 61. - Conflicts and disputes arising out of mining locations shall be submitted to the Director of Mines for decision: Provided, That the decision or order of the Director of Mines may be appealed to the Secretary of Agriculture and Natural Resources within thirty days from receipt of such decision or order. In case any one of

the parties should disagree from the decision or order of the Secretary of Agriculture and Natural Resources, the matter may be taken to the Court of Appeals or the Supreme Court, as the case may be, within thirty days from the receipt of such decision or order, otherwise the said decision or order shall be final and binding upon the parties concerned. x x x.

Section 50 of Presidential Decree No. 463 reads:

Sec. 50. Appeals. - Any party not satisfied with the decision or order of the Director, may, within five (5) days from receipt thereof, appeal to the Minister [now Secretary]. Decisions of the Minister [now Secretary] are likewise appealable within five (5) days from receipt thereof by the affected party to the President whose decision shall be final and executory.

Petitioner's insistence that the 30-day reglementary period provided by Section 61 of Commonwealth Act No. 137, as amended, applies, cannot be sustained by this Court. By providing a five-day period within which to file an appeal on the decisions of the Director of Mines and Geo-Sciences, Presidential Decree No. 463 unquestionably repealed Section 61 of Commonwealth Act No. 137.

In *Pearson v. Intermediate Appellate Court*,<sup>[28]</sup> this Court extensively discussed the development of the law on the adjudication of mining claims, as seen in the provisions of Commonwealth Act No. 137, Presidential Decree No. 463, until its present state under Republic Act No. 7942. It was noted that there was a clear effort to modernize the system of administration and disposition of mineral lands and that the procedure of adjudicating mining claims had become increasingly administrative in character.

[W]ith the issuance of Presidential Decree Nos. 99-A, 309, and 463, the procedure of adjudicating conflicting mining claims has been made completely administrative in character, with the President as the final appeal authority. Section 50 of P.D. 463, providing for a modernized system of administration and disposition of mineral lands, to promote and encourage the development and exploitation thereof, mandates on the matter of "Protests, Adverse Claims and Appeals," the following procedure:

Appeals — Any party not satisfied with the decision or order of the Director may, within five (5) days from receipt thereof appeal, to the Secretary. Decisions of the Secretary are likewise appealable within five (5) days from receipt thereof by the affected party to the President of the Philippines whose decision shall be final and executory.

It should be noted that before its amendment, the Mining Law (C.A. No. 137) required that after the filing of adverse claim with the Bureau of Mines, the adverse claimant had to go to a court of competent jurisdiction for the settlement of the claim. With the amendment seeking to expedite the resolution of mining conflicts, the Director of Mines became the mandatory adjudicator of adverse claims, instead of the Court of First instance. Thus, it cannot escape notice that under Section 61 of the Mining Law, as amended by Republic Act Nos. 746 and 4388, appeals from the decision of the Secretary of Agriculture and Natural Resources (then Minister of Natural Resources) on conflicts and disputes arising out of mining locations may be made to the Court of Appeals or the Supreme Court as the case may be. In contrast, under the decrees issued at the onset of martial law, it has been expressly provided that the decisions of the same Secretary in mining cases are appealable to the President of the Philippines under Section 50 of the Mineral Resources Development Decree of 1974 (P.D. No. 463) and Section 7 of P.D. No. 1281 in relation to P.D. No. 309.

The trend at present is to make the adjudication of mining cases a purely administrative matter. This does not mean that administrative bodies have complete rein over mining disputes. The very terms of Section 73 of the Mining Law, as amended by R.A. No. 4388, in requiring that the adverse claim must "state in full detail the nature, boundaries and extent of the adverse claim" show that the conflicts to be decided by reason of such adverse claim refer primarily to questions of fact. The controversies to be submitted and resolved by the Director

of Mines under the sections referred only to the overlapping of claims and administrative matters incidental thereto. Questions and controversies that are judicial, not administrative, in nature can be resolved only by the regular courts in whom is vested the judicial power to resolve and adjudicate such civil disputes and controversies between litigants in accordance with the established norms of law and justice. Decisions of the Supreme Court on mining disputes have recognized a distinction between (1) the primary powers granted by pertinent provisions of law to the then Secretary of Agriculture and Natural Resources (and the bureau directors) of an executive or administrative nature, such as "granting of license, permits, lease and contracts, or approving, rejecting, reinstating or cancelling applications, or deciding conflicting applications," and (2) controversies or disagreements of civil or contractual nature between litigants which are questions of a judicial nature that may be adjudicated only by the courts of justice.

This distinction is carried on even under the present law. Findings of fact by the Mines Adjudication Board, which exercises appellate jurisdiction over decisions or orders of the panel of arbitrators, shall be conclusive and binding on the parties, and its decision or order shall be final and executory. But resort to the appropriate court, through a petition for review by certiorari, involving questions of law, may be made within thirty days from the receipt of the order or decision of the Mines Adjudication Board.

Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal. The right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law.[29]

Petitioner invokes the judicial policy of allowing appeals, although filed late, when the interest of justice so requires. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules.[30] In the instant case, petitioner failed to state any compelling reason for not filing its appeal within the mandated period. Instead, the records show that after failing to comply with the period within which to file their motion for reconsideration on time, they again failed to file their appeal before the Office of the DENR Secretary within the time provided by law.

Even if petitioner had not lost its right to appeal, it cannot claim any mining rights over Block 159 for failure to comply with the legal requirements. Petitioner applied for an MPSA with the DENR on 18 October 1991, prior to the release of Block 159 from the Malangas Coal Reservation under Proclamation No. 890 on 13 April 1992. Thus, the provisions on the acquisition of mining rights within a government reservation other than a mineral reservation under Presidential Decree No. 463 and the Consolidated Mines Administrative Order (CMAO) should apply.

As a general rule, prospecting and exploration of minerals in a government reservation is prohibited under Section 13 of Presidential Decree No. 463. However, the same rule provides an exception involving instances when the government agency concerned allows it.

Section 13. Areas Closed to Mining Location. – No prospecting and exploration shall be allowed:

(a) In military, and other Government reservations except when authorized by the proper Government agency concerned.

Section 8 of Presidential Decree No. 463 reiterates the rule and clarifies it further by stating that prospecting, exploration and exploitation of minerals on reserved lands other than mineral reservations may be undertaken by the proper government agency. As an exception to this rule, qualified persons may undertake the said prospecting, exploration and exploitation when the said agencies cannot undertake them.

Section 8. Prospecting, Exploration and Exploitation of Minerals in Reserved Lands. – Prospecting, exploration and exploitation of minerals in reserved lands other than mineral reservations may be undertaken by the proper government agency. In the event that the said agencies cannot undertake the prospecting, exploration and exploitation of minerals in reserved lands, qualified persons may be permitted to undertake such prospecting, exploration and exploitation in accordance with the rules and regulations promulgated by the Secretary [Minister]. The right to exploit the minerals found therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary [Minister]: Provided, That the party who undertook prospecting, exploration and exploitation of said are shall be given priority.

Notwithstanding the provisions of the preceding paragraph, a special permit may be issued by the Director to the exploration permittee to extract, remove and dispose of minerals in limited quantities as verified by the Bureau of Mines [Director of Mines and Geo-Sciences].

Section 15 of the CMAO is more straightforward when it states that government reserved lands are open for prospecting, subject to the rules and regulations provided therein.

SEC. 15. Government Reserved Land. – Lands reserved by the Government for purposes other than mining are open to prospecting. Any interested party may file an application therefore with the head of the agency administering said land, subject always to compliance with pertinent laws and rules and regulations covering such reserved land. Such application shall be acted upon within thirty (30) days. In such cases, the compensation due the surface owner shall accrue equally to the agency administering the reserved land and the Bureau of Mines.

The law enumerates the following requirements: (1) a prospecting permit from the agency that has jurisdiction over the area, in this case, the OEA;<sup>[31]</sup> (2) an exploration permit from the BMGS;<sup>[32]</sup> (3) if the exploration reveals the presence of commercial deposit, the permittee applies before the BMGS for the exclusion of the area from the reservation;<sup>[33]</sup> (4) granting by the president of the application to exclude the area from the reservation;<sup>[34]</sup> and (5) a mining agreement approved by the DENR Secretary.

In this case, petitioner complied with the first requirement and obtained a prospecting permit from the OEA. In its correspondence with the petitioner, the OEA, however, advised the petitioner on two separate occasions to obtain a "prospecting permit" from the BMGS, although the OEA was probably referring to an exploration permit.<sup>[35]</sup> The petitioner did not apply for an exploration permit with the BMGS, nor would the BMGS have granted petitioner an exploration permit because when petitioner wrote to the BMGS informing the latter of its intention to enter into an MPSA with the DENR over Block 159, the BMGS informed the petitioner that the respondent's claim over Block 159 had already preceded that of the petitioner.<sup>[36]</sup> The advice given by the BMGS was justified since at that time, the respondent already had a pending application for the exclusion of Block 159 from the Malangas Coal Reservation. Thereafter, the petitioner filed his MPSA application, without complying with the second, third and fourth requisites. Since it ignored the sound advice of the OEA and the BMGS, the government agencies concerned, and stubbornly insisted on its incorrect procedure, petitioner cannot complain now that its MPSA was revoked for failure to comply with the legal requirements.

In contrast, the respondent applied for a DOL as early as 30 January 1989. The DENR Regional Office refused to register the respondent's DOL since Block 159 was still part of the Malangas Coal Reservation and advised the respondent to apply for the exclusion of the area from the reservation. The respondent followed this advice. The BMGS then treated the respondent's application for a DOL as an application for an exploration permit and caused a verification report of the area applied for, as provided under Section 99 of the CMAO.[37] Upon the application of the respondent, the OEA and thereafter the DENR Secretary endorsed the respondent's application for the exclusion of the area from the reservation.[38] This application was granted by the President, through Proclamation No. 890, which provided that the mining rights to Block 159 will be disposed of in accordance with Executive Order No. 279. On 30 July 1992, respondent filed his MPSA.[39] On 12 April 1993, the RED of Zamboanga City ordered that the respondent's MPSA be given due course.[40] Although the respondent's applications may not follow the strict letter of the law, there was substantial compliance with the requirements of the law. Hence, the respondent was able to acquire a preferential right on the mining claims over Block 159, as provided under Section 101 of the CMAO.

Even if it were to be assumed that the respondent failed to comply with these requirements, this would not be fatal to his cause since he filed his MPSA on 31 July 1992, after the issuance of Proclamation No. 890; therefore, the provisions on the application of mining rights over government reservations would no longer apply to him because Block 159 was already converted into a mineral reservation, wherein a different set of rules would apply. The only effect of his failure to comply with the requirements CMAO on government reservations is that he loses the preferential right over the area involved. In this case, the respondent was the only applicant to the mining rights over Block 159, apart from the petitioner who was not qualified for failure to comply with the legal requirements. Proclamation No. 890 specifically provides that Executive Order No. 279 should be applied. Records indicate that the provisions of Executive Order No. 279 have been complied with.[41]

IN VIEW OF THE FOREGOING, the instant Petition is DENIED. The assailed Decision of the Mines Adjudication Board is hereby AFFIRMED. No costs.

**SO ORDERED.**

Panganiban, C.J., (Chairman), Ynares-Santiago. Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Penned by Chairman Victor O. Ramos with Associate Justices Virgilio Q. Mercado and Horacio C. Ramos, concurring; rollo, pp. 199-205.

[2] Rollo, p. 91.

[3] Records, Folder II, pp. 14-15, 39-40, 41.

[4] Rollo, p. 200.

[5] Id. at 41 and 46.

[6] Id. at 91.

[7] Records, Folder V, p. 43.

[8] Executive Order 279, Authorizing the Secretary of Environment and National Resources to Negotiate and Conclude Joint Venture Co-Production, or Production-Sharing Agreements for the Exploration, Development and Utilization of Mineral Resources, and Prescribing the Guidelines for Such Agreements and Those Agreements Involving Technical or Financial Assistance by Foreign Owned Corporations for Large-Scale Exploration,

Development and Utilization of Minerals, 25 July 1987.

[9]Rollo, p. 92.

[10] Id.

[11]Id. at 93.

[12]Id. at 94-98.

[13]Id. at 99-100.

[14] Id. at 101-112.

[15]Id. at 200.

[16]Id. at 114-118.

[17]Sec. 50. Appeals. - Any party not satisfied with the decision or order of the Director may, within five (5)days from receipt thereof, appeal to the Minister (now Secretary). Decisions of the Minister (now Secretary) are likewise appealable within five (5) days from receipt thereof by the affected party to the President of the Philippines whose decision shall be final and executory.

[18]Rollo, pp. 120-134.

[19] Id. at 135-150.

[20] Id. at 152-164.

[21] Id. at 181-186.

[22]Id. at 199-205.

[23] SEC. 78. Appellate Jurisdiction. – The decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

[24]Rollo, p. 5.

The last paragraph of Section 79 of Republic Act No. 7942, The Philippine Mining Act of 1995 provides that:

x x x x

A petition for review by certorari and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

[25]Sebastian v. Hon. Morales, 445 Phil. 595, 606-607 (2003).

[26] Carpio v. Sulu Resources Development Corporation, 435 Phil. 836, 844 (2002); Fabian v. Hon. Disierto, 356 Phil. 787, 803-804 (1998); Sy v. Commission on Settlement of Land Problems, 417 Phil. 378, 393 (2001); Sebastian v. Morales, supra.

[27]An Act to Provide for The Conservation, Disposition, and Development of Mineral Land and Minerals, 7 November 1936.

[28] 356 Phil. 341, 357-359 (1998).

[29] Republic v. Court of Appeals, 379 Phil. 92, 100-101 (2000).

[30] Sebastian v. Morales, supra note 25 at 558-559.

[31]SEC. 97. Prospecting Permit – Before a prospector is allowed to enter a government reservation, he shall first secure a prospecting permit from the agency that has jurisdiction over the area. He shall submit to said agency the following:

- a) Bureau of Coast and Geodetic Survey Map of scale 1:50,000 showing the boundaries of the area and location thereof in the map prepared by a geodetic engineer; and
- b) Proof of financial capability and technical competence.

The term of prospecting permit shall be for six (6) months within which period the applicant may apply for exploration permit with the Bureau of Mines. If portions only of the area covered by the permit are mineralized, the prospector shall modify and reduce the area. In no case should the area be enlarged even after prospecting the same is found to be larger than the original area applied for. Another application for prospecting permit for the additional area shall be filed thereon.

[32]SEC. 98. Application for Exploration Permit – Upon discovery of mineral deposits or strong evidences thereof, the prospector may apply for exploration permit with the Bureau of Mines on the form (BM Form No. MRD-24) attached hereto as Appendix "T", and made part of these Regulations. He shall pay a filing fee of fifty centavos (P0.50) per hectare, and submit together with his application the following:

- a) A certified copy of the prospecting permit which should be subsisting at the date of application for exploration permit;
- b) Copy of the same location map as in Section 97 (a) accompanied by another mad defined by actual survey;
- c) Work program for exploration covering the full term of the permit for two (2) years;
- d) Proof of financial capability and technical competence to undertake exploration; and
- e) Geologic support of prospecting activities and findings in the area prepared by a licensed geologist or mining engineer.

SEC. 99. Approval of Exploration Permit -- The Director shall thereafter cause a geologic verification of the area applied for and upon finding that the same contains minerals, he may issue an exploration permit. He may issue an exploration permit on the form (BM Form No. MRD-25) hereto attached as Appendix "U", and made part of these Regulations, for a period of two (2) years extendable for the same period.

[33] SEC. 101. Exclusion of the Area for Mining Purposes -- If the result of the exploration reveals the presence of a commercial deposit, the permittee may apply with the Bureau of Mines for the exclusion of the area from the reservation which shall be supported by:

- a) Complete geologic report on the area prepared by a licensed geologist;
- b) Project study prepared by a licensed mining engineer justifying the development of the area;
- c) Financial report of all expenditures incurred duly certified by a certified public accountant; and
- d) Boundary survey of the area by a deputy geodetic engineer complete with survey returns and map on prescribed form (BM Form No. MRD-18).

Upon receipt of the application, the Director shall conduct a verification of the findings reported in the project study and valuation of the area at the expense of the applicant.

If after verifications the Director finds the application meritorious, he shall forward to the Secretary for consideration who may recommend to the President the exclusion of the area from the reservation.

In the event that the area is excluded from the reservation, the applicant shall have a preferential right to the lease thereof, subject to the terms which the President may impose in the exclusion of the area.

[34] Id.

[35] Rollo, p. 41 and 46.

[36] Records, Folder V, p. 43.

[37] Records, Folder II, pp. 32-33; Rollo, p. 203.

[38] Id. at 39-40, and 41.

[39] Records, Folder II, p. 62.

[40] Rollo, p. 93.

[41] Records, Folder II, pp. 62-100.

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