

PHILIPPINE GEOTHERMAL INC., PETITIONER, VS. NATIONAL POWER CORPORATION, RESPONDENT.

G.R. No. 144302. May 22, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before this Court is a petition for review on certiorari seeking to set aside and nullify the March 24, 2000 Decision and August 2, 2000 Resolution of the Court of Appeals in CA-G.R. SP No. 43853, “Philippine Geothermal Incorporated v. Hon. Teodoro P. Regino as Presiding Judge of the Regional Trial Court of Quezon City, Branch 84, and the National Power Corp.”

The antecedent facts of the case are as follows:

On September 10, 1971, the National Power Corporation (NPC) entered into a service contract^[1] with Philippine Geothermal, Inc. (PGI), a corporation organized and existing under the laws of California, United States of America, for the exploration and exploitation of geothermal resources covering the Tiwi and Mak-Ban Geothermal Fields. Section 3.1 of said contract provides:

Section 3 – Term

3.1 The term of this contract shall be twenty-five (25) years renewable for another twenty-five (25) years upon the option of PGI under the same terms and conditions set forth herein.

Albeit the service contract was to expire in 1996, the negotiations for its renewal started as early as 1994.

NPC, however, was doubtful whether a renewal would be constitutional in light of Section 2, Article XII of the 1987 Constitution reading:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the state. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the state. The state may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

x x x (Emphasis supplied)

As the service contract contained an arbitral clause, PGI filed on July 8, 1996 a request for arbitration^[2] with the International Court of Arbitration (ICA) of the International Chamber of Commerce (ICC).

On August 21, 1996, the NPC filed before the Regional Trial Court (RTC) of Quezon City a petition for declaratory relief[3] against PGI praying for the determination of the constitutionality of Section 3 of the service contract, specifically the above-quoted provision thereof on the renewal of the contract at the option of PGI.

On October 2, 1996, PGI filed a motion to dismiss[4] the petition for declaratory relief alleging, among other things, that the trial court has no jurisdiction over it in light of the pending arbitration proceedings it instituted.

By Order[5] of December 3, 1996, Branch 84 of the Quezon City RTC denied the motion to dismiss on the ground that the legality or constitutionality of the renewal of the service contract is an issue which only a regular court of justice may resolve or settle.

PGI filed a motion for reconsideration[6] which was denied by Order[7] of March 6, 1997.

PGI thus assailed the denial by the trial court of its motion to dismiss by certiorari and prohibition before the Court of Appeals, alleging that:

- RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN NOT GRANTING THE MOTION TO DISMISS RESPONDENT NPC'S PETITION FOR DECLARATORY RELIEF FILED BY PGI FOR THE REASONS THAT:

(A)

BY ESTABLISHED JURISPRUDENCE, THE CASE BELOW SHOULD BE DISMISSED IN VIEW OF THE PENDING ARBITRATION PROCEEDING OVER THE SAME SUBJECT MATTER BECAUSE (i) RESPONDENT JUDGE DOES NOT HAVE JURISDICTION TO TAKE COGNIZANCE OF THE CASE; (ii) THERE IS ANOTHER ACTION PENDING BETWEEN THE PARTIES FOR THE SAME CAUSE; AND (iii) THE PETITION BELOW STATES NO CAUSE OF ACTION.

(B)

CONSTITUTIONAL AND PUBLIC POLICY ISSUES, IF ANY, SHOULD BE RAISED FIRST IN THE ARBITRATION PROCEEDING, AND SUBSEQUENTLY, IF WARRANTED, IN THE PROCEEDING FOR THE ENFORCEMENT OF THE ARBITRAL AWARD.

(C)

RESPONDENT NPC HAS ENGAGED IN FORUM SHOPPING.

(D)

THE REMEDY OF DECLARATORY RELIEF IS BOTH PREMATURE AND ACADEMIC – PREMATURE BECAUSE IT SHOULD BE RAISED FIRST IN THE ARBITRATION PROCEEDING AND IN THE ENFORCEMENT PROCEEDING OF THE ARBITRAL AWARD IF STILL NECESSARY; AND ACADEMIC BECAUSE BY NPC'S OWN CONDUCT, THERE IS ALREADY A BREACH OF THE SERVICE CONTRACT; AND

(E) THE REPUBLIC OF THE PHILIPPINES, A PARTY IN THE ARBITRATION CASE BECAUSE OF ITS SOVEREIGN GUARANTY, IS A NECESSARY PARTY IN THIS CASE; AND THE ABSENCE OF A NECESSARY PARTY IN A CASE FOR DECLARATORY RELIEF, IS A JURISDICTIONAL DEFECT.[8]

- RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER ITS

RIGHT TO PROCEDURAL DUE PROCESS AND IN BEING BIASED IN FAVOR OF NPC TO SERIOUS PREJUDICE OF PGI.

Pending decision of the petition by the Court of Appeals, PGI and NPC filed on July 10, 1998 a joint motion to suspend proceedings[9] as the parties were exploring the possibility of amicable settlement.

Without resolving the joint motion to suspend, the Court of Appeals rendered a Decision[10] of March 24, 2000 dismissing PGI's petition.

Hence, the instant petition raising the following arguments:

I.

THE COURT OF APPEALS HAD NO JURISDICTION TO RENDER THE DECISION IN THE LIGHT OF A PENDING JOINT MOTION TO SUSPEND FILED BY THE PARTIES.

II.

THE PETITION FOR DECLARATORY RELIEF SHOULD HAVE BEEN DISMISSED BY THE REGIONAL TRIAL COURT AS WELL AS BY THE COURT OF APPEALS IN VIEW OF THE PENDING ARBITRATION PROCEEDINGS OVER THE SAME SUBJECT MATTER IN VIEW OF A BREACH OF THE CONTRACT SUBJECT OF THE PETITION.

III.

THE DECISIONS OF THE COURT OF APPEALS AND OF THE REGIONAL TRIAL COURT ARE NULL AND VOID FOR BEING MATERIALLY INFECTED, CONSCIOUSLY OR UNCONSCIOUSLY, WITH OBVIOUS BADGES OF BIAS AND PREJUDICE.[11]

During the pendency of the instant petition, PGI and the NPC filed several joint motions to suspend proceedings[12] upon the ground that they were negotiating for the settlement of the case. The motions were granted by this Court.[13]

On December 22, 2003, PGI and NPC filed a Joint Motion to Approve Compromise Agreement and to Dismiss based on Compromise Agreement alleging that, among others things:

x x x

33. The fact that the Compromise Agreement and its amendment went through such exhaustive review by different agencies of government and that the same passed thorough scrutiny attests to the validity and soundness of the terms of compromise contained therein. It must be pointed out that this agreement was studied and examined by agencies of government directly dealing with the subject of the agreement and who are in the best position, by their skill and technical expertise, to assess the validity of the terms and the benefit accruing to the state.

x x x

36. x x x The Compromise Agreement is not contrary to law because it in fact directly addressed to the very heart of the constitutional issues involved in this controversy. Thus [PGI] and [NPC] have agreed to terminate the Service Contract subject matter of the dispute, in favor of a new Geothermal Sales Contract and a PD 1442 Geothermal Service Contract, and PGI has committed to form a Philippine company for the development and operation of the Tiwi and Mak-Ban steamfields (Sec. 6.1 thereof) on a going-forward basis, thereby effectively erasing any doubt as to the legality of the compromise.

x x x

38. x x x [The] Compromise Agreement is not contrary to morals. The arrangement is commercially advantageous to the Government of the Philippines, NPC, PSALM and the consuming public. As above-stated, no less than the NEDA has confirmed that the government stands to gain over US \$256 Million by entering

into this compromise. x x x

39. x x x [The] Compromise Agreement is not contrary to public policy. It has been categorically declared by the state that private sector participation and privatization of state-owned enterprises and their assets is encouraged in order to accelerate economic progress and development as evidenced by various laws and issuances[.] x x x (Emphasis supplied)

The assailed decision of the Court of Appeals dwells on the issue of jurisdiction of the RTC over the NPC petition for declaratory relief on the constitutionality of the service contract.

Since only the issue of jurisdiction over the constitutionality of a contract was elevated to this Court, it is beyond its jurisdiction to pass upon and approve the Compromise Agreement of the parties, who have, as therein stated, “agreed to terminate the service contract subject of the dispute, in favor of” a series of agreements that start with “Provisional,” followed by “Interim,” then “Transition,” and finally “Geothermal Resources Sales Contract (GRSC),” the forging of which agreements is intended to “effectively erase any doubt as to the legality of the compromise.”

In light of the foregoing development, while this Court denies the parties’ Joint Motion to Approve the Compromise Agreement, it finds the Motion to Dismiss well-taken.

WHEREFORE, the Motion to Dismiss the instant petition is hereby GRANTED.

SO ORDERED.

Vitug, (Chairman and Acting Chief Justice), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Court of Appeals Rollo (CA Rollo) at 69-309.

[2] Id. at 331-336.

[3] Id. at 55-68.

[4] Id. at 312-330.

[5] Id. at 501-502.

[6] Id. at 503-534.

[7] Id. at 566.

[8] Id. at 15.

[9] Rollo at 52-57.

[10] Id. at 77-85.

[11] Id. at 23.

[12] Id. at 398-401, 403-406, 409-412, 416-420, 423-426, 431-436, 439-444.

[13] Id. at 402-a, 408, 413, 422, 430, 438.

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