

**CELESTIAL NICKEL MINING EXPLORATION CORPORATION,
PETITIONER, VS. MACROASIA CORPORATION (FORMERLY INFANTA
MINERAL AND INDUSTRIAL CORPORATION), CORPORATION, AND
LEBACH MINING CORP...**

G.R. No. 169080. December 19, 2007

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

Before us are four (4) petitions. The first is a Petition for Review on Certiorari[1] under Rule 45 docketed as G.R. No. 169080, wherein petitioner Celestial Nickel Mining Exploration Corporation (Celestial) seeks to set aside the April 15, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 87931. The CA affirmed the November 26, 2004 Resolution of the Mines Adjudication Board (MAB) in MAB Case Nos. 056-97 and 057-97 (DENR Case Nos. 97-01 and 97-02), upholding the authority of the Department of Environment and Natural Resources (DENR) Secretary to grant and cancel mineral agreements. Also assailed is the August 3, 2005 Resolution[3] of the CA denying the Motion for Reconsideration of the assailed Decision.

The second is a Petition for Certiorari[4] under Rule 65 docketed as G.R. No. 172936, wherein petitioner Blue Ridge Mineral Corporation (Blue Ridge) seeks to annul and set aside the action of then Secretary Michael T. Defensor, in his capacity as DENR Secretary, approving and signing two Mineral Production Sharing Agreements (MPSAs) in favor of Macroasia Corporation (Macroasia) denominated as MPSA Nos. 220-2005-IVB and 221-2005-IVB.

And the third and fourth are petitions for review on certiorari[5] under Rule 45 docketed as G.R. No. 176226 and G.R. No. 176319, wherein petitioners Celestial and Macroasia, respectively, seek to set aside the May 18, 2006 Decision[6] of the CA in CA-G.R. SP No. 90828. The CA reversed and set aside the November 26, 2004 and July 12, 2005 Resolutions of the MAB, and reinstated the October 24, 2000 Decision in MAB Case Nos. 056-97 and 057-97, granting Blue Ridge the prior and preferential right to file its application over the mining claims of Macroasia. These petitions likewise seek to set aside the January 19, 2007 Resolution[7] of the CA denying petitioners' motions for reconsideration of the assailed Decision.

Through our July 5, 2006 Resolution,[8] we consolidated the first two cases. While in our subsequent April 23, 2007[9] and July 11, 2007[10] Resolutions, we consolidated the four cases as they arose from the same facts.

The undisputed facts as found by the CA in CA-G.R. SP No. 87931 are as follows:

On September 24, 1973, the then Secretary of Agriculture and Natural Resources and Infanta Mineral and Industrial Corporation (Infanta) entered into a Mining Lease Contract (V-1050) for a term of 25 years up to September 23, 1998 for mining lode claims covering an area of 216 hectares at Sitio Linao, Ipilan, Brooke's Point, Palawan. The mining claims of Infanta covered by lode/lease contracts were as follows:

Contract No. Area Date of Issuance

LLC-V-941 18 hectares January 17, 1972

LC-V-1050 216 hectares September 24, 1973

LLC-V-1060 16 hectares October 30, 1973

LLC-V-1061 144 hectares October 30, 1973

LLC-V-1073 144 hectares April 18, 1973

MLC-MRD-52 306 hectares April 26, 1978

MLC-MRC-53 72 hectares April 26, 1978

Infanta's corporate name was changed to Cobertson Holdings Corporation on January 26, 1994 and subsequently to its present name, Macroasia Corporation, on November 6, 1995.

Sometime in 1997, Celestial filed a Petition to Cancel the subject mining lease contracts and other mining claims of Macroasia including those covered by Mining Lease Contract No. V-1050, before the Panel of Arbitrators (POA) of the Mines and Geo-Sciences Bureau (MGB) of the DENR. The petition was docketed as DENR Case No. 97-01.

Blue Ridge, in an earlier letter-petition, also wrote the Director of Mines to seek cancellation of mining lease contracts and other mining rights of Macroasia and another entity, Lebach Mining Corporation (Lebach), in mining areas in Brooke's Point. The petition was eventually docketed as DENR Case No. 97-02.

Celestial is the assignee of 144 mining claims covering such areas contiguous to Infanta's (now Macroasia) mining lode claims. Said area was involved in protracted administrative disputes with Infanta (now Macroasia), Lecar & Sons, Inc., and Palawan Nickel Mining Corporation. Celestial also holds an MPSA with the government which covers 2,835 hectares located at Ipilan/Maasin, Brooke's Point, Palawan and two pending applications covering another 4,040 hectares in Barangay Mainit also in Brooke's Point.

Celestial sought the cancellation of Macroasia's lease contracts on the following grounds: (1) the nonpayment of Macroasia of required occupational fees and municipal taxes; (2) the non-filing of Macroasia of Affidavits of Annual Work Obligations; (3) the failure of Macroasia to provide improvements on subject mining claims; (4) the concentration of Macroasia on logging; (5) the encroachment, mining, and extraction by Macroasia of nickel ore from Celestial's property; (6) the ability of Celestial to subject the mining areas to commercial production; and (7) the willingness of Celestial to pay fees and back taxes of Macroasia.

In the later part of the proceedings, Macroasia intervened in the case and submitted its position paper refuting the grounds for cancellation invoked by Celestial.[11]

The Ruling of the Panel of Arbitrators in
DENR Case Nos. 97-01 and 97-02

Based on the records of the Bureau of Mines and findings of the field investigations, the POA found that Macroasia and Lebach not only automatically abandoned their areas/mining claims but likewise had lost all their rights to the mining claims. The POA granted the petition of Celestial to cancel the following Mining Lease Contracts of Macroasia: LLC-V-941, LLC-V-1050, LLC-V-1060, LLC-V-1061, LLC-V-1073, MLC-MRD-52, and MLC-MRC-53; and found the claims of the others indubitably meritorious. It gave Celestial the preferential

right to Macroasia's mining areas.[12] It upheld Blue Ridge's petition regarding DENR Case No. 97-02, but only as against the Mining Lease Contract areas of Lebach (LLC-V-1153, LLC-V-1154, and LLC-V-1155), and the said leased areas were declared automatically abandoned. It gave Blue Ridge priority right to the aforesaid Lebach's areas/mining claims.[13]

Blue Ridge and Macroasia appealed before the MAB, and the cases were docketed as MAB Case Nos. 056-97 and 057-97, respectively.

Lebach did not file any notice of appeal with the required memorandum of appeal; thus, with respect to Lebach, the above resolution became final and executory.

The Rulings of the Mines Adjudication Board in
MAB Case Nos. 056-97 and 057-97 (DENR Case Nos. 97-01 and 97-02)

The MAB resolved the issues of timeliness and perfection of Macroasia's appeal; Macroasia's abandonment of its mining claims; and the preferential right over the abandoned mining claims of Macroasia.

Conformably with Section 51 of Consolidated Mines Administrative Order (CMAO)[14] implementing Presidential Decree No. (PD) 463[15] and our ruling in *Medrana v. Office of the President (OP)*,[16] the MAB affirmed the POA findings that Macroasia abandoned its mining claims. The MAB found that Macroasia did not comply with its work obligations from 1986 to 1991. It based its conclusion on the field verifications conducted by the MGB, Region IV and validated by the Special Team tasked by the MAB.[17] However, contrary to the findings of the POA, the MAB found that it was Blue Ridge that had prior and preferential rights over the mining claims of Macroasia, and not Celestial.

Thus, on October 24, 2000, the MAB promulgated its Decision upholding the Decision of the POA to cancel the Mining Lode/Lease Contracts of Macroasia; declaring abandoned the subject mining claims; and opening the mining area with prior and preferential rights to Blue Ridge for mining applications, subject to strict compliance with the procedure and requirements provided by law. In case Blue Ridge defaults, Celestial could exercise the secondary priority and preferential rights, and subsequently, in case Celestial also defaults, other qualified applicants could file.[18]

Both Celestial and Macroasia moved for reconsideration.[19] Celestial asserted that it had better rights than Blue Ridge over the mining claims of Macroasia as it had correctly filed its petition, and filed its MPSA application after Macroasia's lease contract expired on January 17, 1997 and after the POA's resolution was issued on September 1, 1997. Moreover, it argued that priority was not an issue when the contested area had not yet been declared abandoned. Thus, Blue Ridge's MPSA application filed on June 17, 1996 had no effect and should not be considered superior since Macroasia's lease contracts were still valid and subsisting and could not have been canceled by Macroasia's mere failure to perform annual work obligations and pay corresponding royalties/taxes to the government.

Macroasia, in its Motion for Reconsideration, reiterated that it did not abandon its mining claims, and even if mining was not listed among its purposes in its amended Articles of Incorporation, its mining activities were acts that were only *ultra vires* but were ratified as a secondary purpose by its stockholders in subsequent amendments of its Articles of Incorporation.

Before the MAB could resolve the motions for reconsideration, on March 16, 2001, Macroasia filed its Supplemental Motion for Reconsideration[20] questioning the jurisdiction of the POA in canceling mining lease contracts and mining claims. Macroasia averred that the power and authority to grant, cancel, and revoke mineral agreements is exclusively lodged with the DENR Secretary. Macroasia further pointed out that in arrogating upon

itself such power, the POA whimsically and capriciously discarded the procedure on conferment of mining rights laid down in Republic Act No. (RA) 7942, The Philippine Mining Act of 1995, and DENR Administrative Order No. (AO) 96-40,[21] and perfunctorily and improperly awarded its mining rights to Blue Ridge and Celestial.

Subsequently, on November 26, 2004, the MAB issued a Resolution[22] vacating its October 24, 2000 Decision, holding that neither the POA nor the MAB had the power to revoke a mineral agreement duly entered into by the DENR Secretary, ratiocinating that there was no provision giving the POA and MAB the concurrent power to manage or develop mineral resources. The MAB further held that the power to cancel or revoke a mineral agreement was exclusively lodged with the DENR Secretary; that a petition for cancellation is not a mining dispute under the exclusive jurisdiction of the POA pursuant to Sec. 77 of RA 7942; and that the POA could only adjudicate claims or contests during the MPSA application and not when the claims and leases were already granted and subsisting.

Moreover, the MAB held that there was no abandonment by Macroasia because the DENR Secretary had not decided to release Macroasia from its obligations. The Secretary may choose not to release a contractor from its obligations on grounds of public interest. Thus, through its said resolution, the MAB rendered its disposition, as follows:

WHEREFORE, premises considered, the assailed Decision of October 24, 2000 is hereby VACATED. The seven (7) mining lease contracts of Macroasia Corporation (formerly Infanta Mineral & Industrial Corporation) are DECLARED SUBSISTING prior to their expirations without prejudice to any Decision or Order that the Secretary may render on the same. NO PREFERENTIAL RIGHT over the same mining claims is accorded to Blue Ridge Mineral Corporation or Celestial Nickel Mining Exploration Corporation also without prejudice to the determination by the Secretary over the matter at the proper time.[23]

After the issuance of the MAB Resolution, Celestial and Blue Ridge went through divergent paths in their quest to protect their individual interests.

On January 10, 2005, Celestial assailed the November 26, 2004 MAB Resolution before the CA in a petition for review[24] under Rule 43 of the Rules of Court. The petition entitled Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation, et al. was docketed as CA-G.R. SP No. 87931.

On the other hand, Blue Ridge first filed a Motion for Reconsideration[25] which was denied.[26] On August 26, 2005, Blue Ridge questioned the MAB's November 26, 2004 and July 12, 2005 Resolutions before the CA in a petition for review[27] entitled Blue Ridge Mineral Corporation v. Mines Adjudication Board, et al. docketed as CA-G.R. SP No. 90828.

CA-G.R. SP No. 87931 filed by Celestial was heard by the 12th Division of the CA; while Blue Ridge's CA-G.R. SP No. 90828 was heard by the Special 10th Division. Ironically, the two divisions rendered two (2) diametrically opposing decisions.

The Ruling of the Court of Appeals Twelfth Division

On April 15, 2005, in CA-G.R. SP No. 87931, the CA 12th Division affirmed the November 26, 2004 MAB Resolution which declared Macroasia's seven mining lease contracts as subsisting; rejected Blue Ridge's claim for preferential right over said mining claims; and upheld the exclusive authority of the DENR Secretary to approve, cancel, and revoke mineral agreements. The CA also denied Celestial's Motion for Reconsideration[28] of the assailed August 3, 2005 Resolution.[29]

Hence, Celestial filed its Petition for Review on Certiorari[30] docketed as G.R. No. 169080, before this Court.

The Ruling of the Court of Appeals Special Tenth Division

On May 18, 2006, the CA Special 10th Division in CA-G.R. SP No. 90828 granted Blue Ridge's petition; reversed and set aside the November 26, 2004 and July 12, 2005 Resolutions of the MAB; and reinstated the October 24, 2000 Decision in MAB Case Nos. 056-97 and 057-97. The Special Tenth Division canceled Macroasia's lease contracts; granted Blue Ridge prior and preferential rights; and treated the cancellation of a mining lease agreement as a mining dispute within the exclusive jurisdiction of the POA under Sec. 77 of RA 7942, explaining that the power to resolve mining disputes, which is the greater power, necessarily includes the lesser power to cancel mining agreements.

On February 20, 2006, Celestial filed a Most Urgent Motion for Issuance of a Temporary Restraining Order/Preliminary Prohibitory Injunction/Mandatory Injunction[31] to defer and preclude the issuance of MPSA to Macroasia by the MGB and the DENR Secretary. We denied this motion in our February 22, 2006 Resolution.[32]

Upon inquiry with the DENR, Blue Ridge discovered that sometime in December 2005 two MPSAs, duly approved and signed by the DENR Secretary, had been issued in favor of Macroasia. Thus, we have the instant Petition for Certiorari[33] filed by Blue Ridge docketed as G.R. No. 172936 under Rule 65, seeking to invalidate the two MPSAs issued to Macroasia.

In the meantime, on June 7, 2006, Celestial filed its Motion for Partial Reconsideration[34] of the May 18, 2006 CA Decision in CA-G.R. SP No. 90828, while Macroasia filed its motion for reconsideration of the same CA decision on July 7, 2006. The motions were denied in the assailed January 19, 2007 CA Resolution. Hence, on March 8, 2007, Celestial filed the third petition[35] docketed as G.R. No. 176226, assailing the CA's May 18, 2006 Decision and January 19, 2007 Resolution, insofar as these granted Blue Ridge's prior and preferential rights. While on March 9, 2007, Macroasia filed the fourth petition[36] docketed as G.R. No. 176319, also assailing the CA's May 18, 2006 Decision and January 19, 2007 Resolution.

The Issues

In G.R. No. 169080, petitioner Celestial raises the following issues for our consideration:

(1)

Whether or not Macroasia, for reasons of public policy is estopped from assailing the alleged lack of jurisdiction of the Panel of Arbitrators and the Mines Adjudication Board only after receiving an adverse judgment therefrom? [sic]

(2)

Whether or not it is only the Secretary of the DENR who has the jurisdiction to cancel mining contracts and privileges? [sic]

(3)

Whether or not a petition for the cancellation of a mining lease contract or privilege is a mining dispute within the meaning of the law? [sic]

(4)

Whether or not Infanta's (Macroasia) mining lease contract areas were deemed abandoned warranting the cancellation of the lease contracts and the opening of the areas to other qualified applicants? [sic]

(5)

Whether or not Macroasia/Infanta had lost its right to participate in this case after it failed to seasonably file its appeal and after its lease contracts had been declared abandoned and expired without having been renewed by the government? [sic]

(6)

Whether or not Celestial has the preferential right to apply for the 23 DE LARA claims which were included in Infanta's (Macroasia) expired lease contract (LLC-V-941) and the other areas declared as lapsed or abandoned by MGB-Region 4 and the Panel of Arbitrators?[37] [sic]

In G.R. No. 172936, petitioner Blue Ridge raises the following grounds for the allowance of the petition:

I

At the outset, the instant petition must be given due course and taken cognizance of by the Honorable Court considering that exceptional and compelling circumstances justify the availment of the instant petition and the call for the exercise of the Honorable Court's primary jurisdiction.

- The exploration, development and utilization of minerals, petroleum and other mineral oils are imbued with public interest. The action of then Secretary Defensor, maintained and continued by public respondent Secretary Reyes, was tainted with grave abuse of discretion, has far-reaching consequences because of the magnitude of the effect created thereby.

- The issues in the instant petition have already been put to fore by Celestial with the First Division of the Honorable Court, and hence, this circumstance justifies the cognizance by the Honorable Court of the instant petition.

II

It was grave abuse of discretion amounting to lack and/or excess of jurisdiction for then Secretary Defensor to have issued the subject MPSAs in favor of private respondent Macroasia, considering that:

- Non-compliance of the mandatory requirements by private respondent Macroasia prior to approval of the subject MPSAs should have precluded then Secretary Defensor from approving subject MPSAs.

- Petitioner Blue Ridge has the prior and preferential right to file its mining application over the mining claims covered by the subject MPSAs, pursuant to the Decision dated 24 October 2000 of the Board and as affirmed by the Decision dated 18 May 2006 of the Court of Appeals in CA-G.R. SP No. 90828.[38]

In G.R. No. 176226, petitioner Celestial ascribes the following errors to the CA for our consideration:

(1) That in reinstating and adopting as its own the Decision of the Mine Adjudication Board affirming the abandonment and cancellation of the mining areas/claims of Macroasia (Infanta) but awarding the prior or preferential rights to Blue Ridge, the Hon. Court of Appeals had decided a question of substance in a way not in accord with the Law (RA 7942) or with the applicable decisions of the Supreme Court; in other words, errors of law had been committed by the Hon. Court of Appeals in granting preferential rights to Blue Ridge;

(2) That the Hon. Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such departure by the Mines Adjudication Board in its Decision of May 18, 2006 and Resolution of January 19, 2007 because:

(A) The findings of fact of the Hon. Court of Appeals are contradictory or inconsistent with the findings of the Panel of Arbitrators;

(B) There is grave abuse of discretion on the part of the Hon. Court of Appeals in its appreciation of the facts, the evidence and the law thereby leading it to make the erroneous conclusion that Blue Ridge, not Celestial, is entitled to the Award of prior/preferential rights over the mining areas declared as abandoned by Macroasia;

(C) There is likewise, a grave abuse of discretion on the part of the Hon. Court of Appeals in that the said Court did not even consider some of the issues raised by Celestial;

(D) That the findings of the Hon. Court of Appeals are mere conclusions not supported by substantial evidence and without citation of the specific evidence upon which they are based; they were arrived at arbitrarily or in disregard of contradiction of the evidence on record and findings of the Panel of Arbitrators in the Resolution of September 1, 1997;

(E) That the findings of the Hon. Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record and are violative of the provisions of RA 7942 and its Implementing Rules and Regulations.[39]

In G.R. No. 176319, petitioner Macroasia raises the following grounds for the allowance of the petition:

I.

The Court of Appeals (Special Tenth Division) should have dismissed the Petition of Blue Ridge outright since the issues, facts and matters involved in the said Petition are identical to those which had already been painstakingly passed upon, reviewed and resolved by the Court of Appeal's Twelfth Division in CA-G.R. SP No. 87931

II.

The Court of Appeals (Special Tenth Division) gravely erred in denying Macroasia's Motion to Inhibit Associate Justice Rosmari Carandang from hearing and deciding the Petition

III.

There were no factual nor legal bases for the Court of Appeals to rule that Macroasia had waived its right to question the jurisdiction of the Mines Adjudication Board

IV.

Republic Act No. 7942 contains provisions which unequivocally indicate that only the Secretary of the Department of Environment and Natural Resources has the power and authority to cancel mining lease agreements

V.

The Court of Appeals (Special Tenth Division) gravely erred in perfunctorily transferring Macroasia's mining lease agreements to Blue Ridge without observing the required procedure nor providing any basis therefor[40]

The Court's Ruling

The petitions under G.R. Nos. 169080, 172936, and 176226 are bereft of merit, while the petition under G.R. No. 176319 is meritorious.

The pith of the controversy, upon which the other issues are hinged is, who has authority and jurisdiction to cancel existing mineral agreements under RA 7942 in relation to PD 463 and pertinent rules and regulations.

G.R. Nos. 169080, 176226 and 176319

We will jointly tackle G.R. Nos. 169080, 176266, and 176319 as the issues and arguments of these three are inextricably intertwined.

Core Issue: Jurisdiction over Cancellation of Mineral Agreements

Petitioner Celestial maintains that while the jurisdiction to approve mining lease contracts or mineral agreements is conferred on the DENR Secretary, Sec. 77(a) of RA 7942 by implication granted to the POA and MAB the authority to cancel existing mining lease contracts or mineral agreements.

On the other hand, respondent Macroasia strongly asserts that it is the DENR Secretary who has the exclusive and primary jurisdiction to grant and cancel existing mining lease contracts; thus, the POA and MAB have no jurisdiction to cancel much less to grant any preferential rights to other mining firms.

Before we resolve this core issue of jurisdiction over cancellation of mining lease contracts, we first need to look back at previous mining laws pertinent to this issue.

Under PD 463, The Mineral Resources Development Decree of 1974, which took effect on May 17, 1974, applications for lease of mining claims were required to be filed with the Director of the Bureau of Mines, within two (2) days from the date of their recording.[41] Sec. 40 of PD 463 provided that if no adverse claim was filed within (15) days after the first date of publication, it was conclusively presumed that no adverse claim existed and thereafter no objection from third parties to the grant of the lease could be heard, except protests pending at the time of publication. The Secretary would then approve and issue the corresponding mining lease contract. In case of any protest or adverse claim relating to any mining claim and lease application, Secs. 48 and 50 of PD 463 prescribed the procedure. Under Sec. 48, the protest should be filed with the Bureau of Mines. Under Sec. 50, any party not satisfied with the decision or order of the Director could, within five (5) days from receipt of the decision or order, appeal to the Secretary. The decisions of the Secretary were likewise appealable within five (5) days from receipts by the affected party to the President of the Philippines whose decision shall be final and executory. PD 463 was, however, silent as to who was authorized to cancel the mineral agreements.

On July 10, 1987, President Corazon C. Aquino issued Executive Order No. (EO) 211. Under Sec. 2 of EO 211, the processing, evaluation, and approval of all mining applications, declarations of locations, operating agreements, and service contracts were governed by PD 463, as amended. EO 211 likewise did not contain any provision on the authority to cancel operating agreements and service contracts.

On July 25, 1987, EO 279 was issued by President Aquino. It authorized the DENR Secretary to negotiate and enter into, for and in behalf of the Government, joint venture, co-production, or production-sharing agreements for the exploration, development, and utilization of mineral resources with any Filipino citizen, corporation, or association, at least 60% of whose capital was owned by Filipino citizens.[42] The contract or agreement was subject to the approval of the President.[43] With respect to contracts of foreign-owned corporations or foreign investors involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, the DENR Secretary could recommend approval of said contracts to the President.[44] EO 279 provided that PD 463 and its implementing rules and regulations, which were not inconsistent with EO 279, continued in force and effect.[45] Again, EO 279 was silent on the authority to cancel mineral agreements.

RA 7942, The Philippine Mining Act of 1995 enacted on March 3, 1995, repealed the provisions of PD 463

inconsistent with RA 7942. Unlike PD 463, where the application was filed with the Bureau of Mines Director, the applications for mineral agreements are now required to be filed with the Regional Director as provided by Sec. 29 of RA 7942. The proper filing gave the proponent the prior right to be approved by the Secretary and thereafter to be submitted to the President. The President shall provide a list to Congress of every approved mineral agreement within 30 days from its approval by the Secretary. Again, RA 7942 is silent on who has authority to cancel the agreement.

Compared to PD 463 where disputes were decided by the Bureau of Mines Director whose decisions were appealable to the DENR Secretary and then to the President, RA 7942 now provides for the creation of quasi-judicial bodies (POA and MAB) that would have jurisdiction over conflicts arising from the applications and mineral agreements. Secs. 77, 78, and 79 lay down the procedure, thus:

SEC. 77. Panel of Arbitrators.—There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one [1] licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

- (a) Disputes involving rights to mining areas;
- (b) Disputes involving mineral agreements or permits;
- (c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
- (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

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.

SEC. 79. Mines Adjudication Board.—The Mines Adjudication Board shall be composed of three (3) members. The Secretary shall be the chairman with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof.

x x x x

A petition for review by certiorari 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.

RA 7942 is also silent as to who is empowered to cancel existing lease contracts and mineral agreements.

Meanwhile, in *Southeast Mindanao Gold Mining Corp. v. MAB*, we explained that the decision of the MAB can first be appealed, via a petition for review, to the CA before elevating the case to this Court.[46]

After a scrutiny of the provisions of PD 463, EO 211, EO 279, RA 7942 and its implementing rules and regulations, executive issuances, and case law, we rule that the DENR Secretary, not the POA, has the jurisdiction to cancel existing mineral lease contracts or mineral agreements based on the following reasons:

1. The power of the DENR Secretary to cancel mineral agreements emanates from his administrative authority, supervision, management, and control over mineral resources under Chapter I, Title XIV of Book IV of the Revised Administrative Code of 1987, viz:

Chapter 1—General Provisions

Section 1. Declaration of Policy.—(1) The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources x x x

Sec. 2. Mandate.—(1) The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy. (2) It shall, subject to law and higher authority, be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources.

x x x x

Sec. 4. Powers and Functions.—The Department shall:

x x x x

(2) Formulate, implement and supervise the implementation of the government's policies, plans, and programs pertaining to the management, conservation, development, use and replenishment of the country's natural resources;

x x x x

(4) Exercise supervision and control over forest lands, alienable and disposable public lands, mineral resources x x x

x x x x

(12) Regulate the development, disposition, extraction, exploration and use of the country's forest, land, water and mineral resources;

(13) Assume responsibility for the assessment, development, protection, licensing and regulation as provided for by law, where applicable, of all energy and natural resources; the regulation and monitoring of service contractors, licensees, lessees, and permit for the extraction, exploration, development and use of natural resources products; x x x

x x x x

(15) Exercise exclusive jurisdiction on the management and disposition of all lands of the public domain x x x

Chapter 2—The Department Proper

x x x x

Sec. 8. The Secretary.—The Secretary shall:

x x x x

(3) Promulgate rules, regulations and other issuances necessary in carrying out the Department's mandate, objectives, policies, plans, programs and projects.

(4) Exercise supervision and control over all functions and activities of the Department;

(5) Delegate authority for the performance of any administrative or substantive function to subordinate officials of the Department x x x (Emphasis supplied.)

It is the DENR, through the Secretary, that manages, supervises, and regulates the use and development of all mineral resources of the country. It has exclusive jurisdiction over the management of all lands of public domain, which covers mineral resources and deposits from said lands. It has the power to oversee, supervise, and police our natural resources which include mineral resources. Derived from the broad and explicit powers of the DENR and its Secretary under the Administrative Code of 1987 is the power to approve mineral agreements and necessarily to cancel or cause to cancel said agreements.

2. RA 7942 confers to the DENR Secretary specific authority over mineral resources.

Secs. 8 and 29 of RA 7942 pertinently provide:

SEC. 8. Authority of the Department.—The Department shall be the primary government agency responsible for the conservation, management, development, and proper use of the States mineral resources including those in reservations, watershed areas, and lands of the public domain. The Secretary shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director, promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act.

SEC. 29. Filing and approval of Mineral Agreements.—x x x.

The filing of a proposal for a mineral agreement shall give the proponent the prior right to areas covered by the same. The proposed mineral agreement will be approved by the Secretary and copies thereof shall be submitted to the President. Thereafter, the President shall provide a list to Congress of every approved mineral agreement within thirty (30) days from its approval by the Secretary. (Emphasis supplied.)

Sec. 29 is a carry over of Sec. 40 of PD 463 which granted jurisdiction to the DENR Secretary to approve mining lease contracts on behalf of the government, thus:

SEC. 40. Issuance of Mining Lease Contract.—If no adverse claim is filed within fifteen (15) days after the first date of publication, it shall be conclusively presumed that no such adverse claim exists and thereafter no objection from third parties to the grant of the lease shall be heard, except protest pending at the time of publication, and the Secretary shall approve and issue the corresponding mining lease x x x.

To enforce PD 463, the CMAO containing the rules and regulations implementing PD 463 was issued. Sec. 44 of the CMAO provides:

SEC. 44. Procedure for Cancellation.—Before any mining lease contract is cancelled for any cause enumerated in Section 43 above, the mining lessee shall first be notified in writing of such cause or causes, and shall be given an opportunity to be heard, and to show cause why the lease shall not be cancelled.

If, upon investigation, the Secretary shall find the lessee to be in default, the former may warn the lessee, suspend his operations or cancel the lease contract (emphasis supplied).

Sec. 4 of EO 279 provided that the provisions of PD 463 and its implementing rules and regulations, not inconsistent with the executive order, continue in force and effect.

When RA 7942 took effect on March 3, 1995, there was no provision on who could cancel mineral agreements. However, since the aforequoted Sec. 44 of the CMAO implementing PD 463 was not repealed by RA 7942 and DENR AO 96-40, not being contrary to any of the provisions in them, then it follows that Sec. 44 serves as basis for the DENR Secretary's authority to cancel mineral agreements.

Since the DENR Secretary had the power to approve and cancel mineral agreements under PD 463, and the power

to cancel them under the CMAO implementing PD 463, EO 211, and EO 279, then there was no recall of the power of the DENR Secretary under RA 7942. Historically, the DENR Secretary has the express power to approve mineral agreements or contracts and the implied power to cancel said agreements.

It is a well-established principle that in the interpretation of an ambiguous provision of law, the history of the enactment of the law may be used as an extrinsic aid to determine the import of the legal provision or the law.[47] History of the enactment of the statute constitutes prior laws on the same subject matter. Legislative history necessitates review of "the origin, antecedents and derivation" of the law in question to discover the legislative purpose or intent.[48] It can be assumed "that the new legislation has been enacted as continuation of the existing legislative policy or as a new effort to perpetuate it or further advance it." [49]

We rule, therefore, that based on the grant of implied power to terminate mining or mineral contracts under previous laws or executive issuances like PD 463, EO 211, and EO 279, RA 7942 should be construed as a continuation of the legislative intent to authorize the DENR Secretary to cancel mineral agreements on account of violations of the terms and conditions thereof.

3. Under RA 7942, the power of control and supervision of the DENR Secretary over the MGB to cancel or recommend cancellation of mineral rights clearly demonstrates the authority of the DENR Secretary to cancel or approve the cancellation of mineral agreements.

Under Sec. 9 of RA 7942, the MGB was given the power of direct supervision of mineral lands and resources, thus:

Sec. 9. Authority of the Bureau.—The Bureau shall have direct charge in the administration and disposition of mineral lands and mineral resources and shall undertake geological, mining, metallurgical, chemical, and other researches as well as geological and mineral exploration surveys. The Director shall recommend to the Secretary the granting of mineral agreements to duly qualified persons and shall monitor the compliance by the contractor of the terms and conditions of the mineral agreements. The Bureau may confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the Director. The Director may deputize, when necessary, any member or unit of the Philippine National Police, barangay, duly registered nongovernmental organization (NGO) or any qualified person to police all mining activities. (Emphasis supplied.)

Corollary to the power of the MGB Director to recommend approval of mineral agreements is his power to cancel or recommend cancellation of mining rights covered by said agreements under Sec. 7 of DENR AO 96-40, containing the revised Implementing Rules and Regulations of RA 7942. Sec. 7 reads:

Sec. 7. Organization and Authority of the Bureau.

x x x x

The Bureau shall have the following authority, among others:

- To have direct charge in the administration and disposition of mineral land and mineral resources;

x x x x

- To recommend to the Secretary the granting of mineral agreements or to endorse to the Secretary for action by the President the grant of FTAA's [Financial and Technical Assistance Agreements], in favor of qualified persons and to monitor compliance by the Contractor with the terms and conditions of the mineral agreements and FTAA's.

- To cancel or to recommend cancellation after due process, mining rights, mining applications and mining

claims for non-compliance with pertinent laws, rules and regulations.

It is explicit from the foregoing provision that the DENR Secretary has the authority to cancel mineral agreements based on the recommendation of the MGB Director. As a matter of fact, the power to cancel mining rights can even be delegated by the DENR Secretary to the MGB Director. Clearly, it is the Secretary, not the POA, that has authority and jurisdiction over cancellation of existing mining contracts or mineral agreements.

4. The DENR Secretary's power to cancel mining rights or agreements through the MGB can be inferred from Sec. 230, Chapter XXIV of DENR AO 96-40 on cancellation, revocation, and termination of a permit/mineral agreement/FTAA. Sec. 230 provides:

Section 230. Grounds

The following grounds for cancellation revocation and termination of a Mining Permit Mineral Agreement/FTAA.

- Violation of any of the terms and conditions of the Permits or Agreements;
- Nonpayment of taxes and fees due the government for two (2) consecutive years; and
- Falsehood or omission of facts in the application for exploration [or Mining] Permit Mineral Agreement/FTAA or other permits which may later, change or affect substantially the facts set forth in said statements.

Though Sec. 230 is silent as to who can order the cancellation, revocation, and termination of a permit/mineral agreement/FTAA, it has to be correlated with the power of the MGB under Sec. 7 of AO 96-40 "to cancel or to recommend cancellation, after due process, mining rights, mining applications and mining claims for noncompliance with pertinent laws, rules and regulations." As the MGB is under the supervision of the DENR Secretary, then the logical conclusion is that it is the DENR Secretary who can cancel the mineral agreements and not the POA nor the MAB.

5. Celestial and Blue Ridge are not unaware of the stipulations in the Mining Lease Contract Nos. V-1050 and MRD-52,[50] the cancellation of which they sought from the POA. It is clear from said lease contracts that the parties are the Republic of the Philippines represented by the Secretary of Agriculture and Natural Resources (now DENR Secretary) as lessor, and Infanta (Macroasia) as lessee. Paragraph 18 of said lease contracts provides:

Whenever the LESSEE fails to comply with any provision of [PD 463, and] Commonwealth Acts Nos. 137, 466 and 470, [both as amended,] and/or the rules and regulations promulgated thereunder, or any of the covenants therein, the LESSOR may declare this lease cancelled and, after having given thirty (30) days' notice in writing to the LESSEE, may enter and take possession of the said premises, and said lessee shall be liable for all unpaid rentals, royalties and taxes due the Government on the lease up to the time of the forfeiture or cancellation, in which event, the LESSEE hereby covenants and agrees to give up the possession of the property leased. (Emphasis supplied.)

Thus, the government represented by the then Secretary of Agriculture and Natural Resources (now the DENR Secretary) has the power to cancel the lease contracts for violations of existing laws, rules and regulations and the terms and conditions of the contracts. Celestial and Blue Ridge are now estopped from challenging the power and authority of the DENR Secretary to cancel mineral agreements.

However, Celestial and Blue Ridge insist that the power to cancel mineral agreements is also lodged with the POA under the explicit provisions of Sec. 77 of RA 7942.

This postulation is incorrect.

Sec. 77 of RA 7942 lays down the jurisdiction of POA, to wit:

Within thirty (30) days, after the submission of the case by the parties for the decision, the panel shall have exclusive and original jurisdiction to hear and decide the following:

- (a) Disputes involving rights to mining areas
- (b) Disputes involving mineral agreements or permits

The phrase "disputes involving rights to mining areas" refers to any adverse claim, protest, or opposition to an application for mineral agreement. The POA therefore has the jurisdiction to resolve any adverse claim, protest, or opposition to a pending application for a mineral agreement filed with the concerned Regional Office of the MGB. This is clear from Secs. 38 and 41 of DENR AO 96-40, which provide:

Sec. 38.

x x x x

Within thirty (30) calendar days from the last date of publication/posting/radio announcements, the authorized officer(s) of the concerned office(s) shall issue a certification(s) that the publication/posting/radio announcement have been complied with. Any adverse claim, protest or opposition shall be filed directly, within thirty (30) calendar days from the last date of publication/posting/radio announcement, with the concerned Regional Office or through any concerned PENRO or CENRO for filing in the concerned Regional Office for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of this Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a certification to that effect within five (5) working days from the date of finality of resolution thereof. Where there is no adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five working days therefrom.

x x x x

No Mineral Agreement shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition is finally resolved by the Panel of Arbitrators.

Sec. 41.

x x x x

Within fifteen (15) working days from the receipt of the Certification issued by the Panel of Arbitrators as provided in Section 38 hereof, the concerned Regional Director shall initially evaluate the Mineral Agreement applications in areas outside Mineral reservations. He/She shall thereafter endorse his/her findings to the Bureau for further evaluation by the Director within fifteen (15) working days from receipt of forwarded documents. Thereafter, the Director shall endorse the same to the secretary for consideration/approval within fifteen working days from receipt of such endorsement.

In case of Mineral Agreement applications in areas with Mineral Reservations, within fifteen (15) working days from receipt of the Certification issued by the Panel of Arbitrators as provided for in Section 38 hereof, the same shall be evaluated and endorsed by the Director to the Secretary for consideration/approval within fifteen days from receipt of such endorsement. (Emphasis supplied.)

It has been made clear from the aforecited provisions that the "disputes involving rights to mining areas" under Sec. 77(a) specifically refer only to those disputes relative to the applications for a mineral agreement or conferment of mining rights.

The jurisdiction of the POA over adverse claims, protest, or oppositions to a mining right application is further

elucidated by Secs. 219 and 43 of DENR AO 95-936, which read:

Sec. 219. Filing of Adverse Claims/Conflicts/Oppositions.—Notwithstanding the provisions of Sections 28, 43 and 57 above, any adverse claim, protest or opposition specified in said sections may also be filed directly with the Panel of Arbitrators within the concerned periods for filing such claim, protest or opposition as specified in said Sections.

Sec. 43. Publication/Posting of Mineral Agreement Application.—

x x x x

The Regional Director or concerned Regional Director shall also cause the posting of the application on the bulletin boards of the Bureau, concerned Regional office(s) and in the concerned province(s) and municipality(ies), copy furnished the barangays where the proposed contract area is located once a week for two (2) consecutive weeks in a language generally understood in the locality. After forty-five (45) days from the last date of publication/posting has been made and no adverse claim, protest or opposition was filed within the said forty-five (45) days, the concerned offices shall issue a certification that publication/posting has been made and that no adverse claim, protest or opposition of whatever nature has been filed. On the other hand, if there be any adverse claim, protest or opposition, the same shall be filed within forty-five (45) days from the last date of publication/posting, with the Regional Offices concerned, or through the Department's Community Environment and Natural Resources Officers (CENRO) or Provincial Environment and Natural Resources Officers (PENRO), to be filed at the Regional Office for resolution of the Panel of Arbitrators. However previously published valid and subsisting mining claims are exempted from posted/posting required under this Section.

No mineral agreement shall be approved unless the requirements under this section are fully complied with and any opposition/adverse claim is dealt with in writing by the Director and resolved by the Panel of Arbitrators. (Emphasis supplied.)

These provisions lead us to conclude that the power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Sec. 77(a) of RA 7942 is confined only to adverse claims, conflicts and oppositions relating to applications for the grant of mineral rights. POA's jurisdiction is confined only to resolutions of such adverse claims, conflicts and oppositions and it has no authority to approve or reject said applications. Such power is vested in the DENR Secretary upon recommendation of the MGB Director. Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of existing mineral agreements.

On the other hand, Celestial and Blue Ridge contend that POA has jurisdiction over their petitions for the cancellation of Macroasia's lease agreements banking on POA's jurisdiction over "disputes involving mineral agreements or permits" under Sec. 77 (b) of RA 7942.

Such position is bereft of merit.

As earlier discussed, the DENR Secretary, by virtue of his powers as administrative head of his department in charge of the management and supervision of the natural resources of the country under the 1987 Administrative Code, RA 7942, and other laws, rules, and regulations, can cancel a mineral agreement for violation of its terms, even without a petition or request filed for its cancellation, provided there is compliance with due process. Since the cancellation of the mineral agreement is approved by the DENR Secretary, then the recourse of the contractor is to elevate the matter to the OP pursuant to AO 18, Series of 1987 but not with the POA.

Matched with the legal provisions empowering the DENR Secretary to cancel a mineral agreement is Sec. 77 (b) of RA 7942 which grants POA jurisdiction over disputes involving mineral agreements.

A dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other." [51] It is synonymous to a cause of action which is "an act or omission by which a party violates a right of another." [52]

A petition or complaint originating from a dispute can be filed or initiated only by a real party-in-interest. The rules of court define a real party-in-interest as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." [53] Every action, therefore, can only be prosecuted in the name of the real party-in-interest. [54] It has been explained that "a real party-in-interest plaintiff is one who has a legal right, while a real party-in-interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former." [55]

On the other hand, interest "means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." It is settled in this jurisdiction that "one having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action." [56] Real interest is defined as "a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest." [57]

From the foregoing, a petition for the cancellation of an existing mineral agreement covering an area applied for by an applicant based on the alleged violation of any of the terms thereof, is not a "dispute" involving a mineral agreement under Sec. 77 (b) of RA 7942. It does not pertain to a violation by a party of the right of another. The applicant is not a real party-in-interest as he does not have a material or substantial interest in the mineral agreement but only a prospective or expectant right or interest in the mining area. He has no legal right to such mining claim and hence no dispute can arise between the applicant and the parties to the mineral agreement. The court rules therefore that a petition for cancellation of a mineral agreement anchored on the breach thereof even if filed by an applicant to a mining claim, like Celestial and Blue Ridge, falls within the jurisdiction of the DENR Secretary and not POA. Such petition is excluded from the coverage of the POA's jurisdiction over disputes involving mineral agreements under Sec. 77 (b) of RA 7942.

Macroasia not estopped from raising the issue of jurisdiction on appeal

On the related issue of estoppel, petitioner Celestial argues that Macroasia is estopped from raising and questioning the issue of the jurisdiction of the POA and MAB over the petition for cancellation of its mining lease contracts, when Macroasia raised it only in its Supplemental Motion for Reconsideration.

We rule that the principle of estoppel does not apply.

Indeed, Macroasia was not the one that initiated the instant case before the POA, and thus was not the one that invoked the jurisdiction of the POA. Hence, on appeal, Macroasia is not precluded from raising the issue of jurisdiction as it may be invoked even on appeal. [58] As a matter of fact, a party can raise the issue of jurisdiction at any stage of the proceedings.

Petitioner Celestial's reliance on *Villela v. Gozun* [59] to support the contention that the POA has jurisdiction to hear and decide a petition to cancel existing mining lease contracts, is misplaced. In said case, we dismissed the petition on the ground of non-exhaustion of administrative remedies and disregarded judicial hierarchy as no compelling reason was shown to warrant otherwise. While we pointed out the authority of the POA, there was no categorical pronouncement on the jurisdictional issue.

No valid pronouncement of abandonment due to lack of jurisdiction over petition to cancel

As we are not a trier of facts, we need not make any finding on the various investigations done by the MGB and

MAB on the issue of Macroasia's non-compliance with its work obligations and nonpayment of taxes and fees. Verily, the law does not impose automatic cancellation of an existing mining lease contract, as it is a question of fact which must be determined by the MGB which can recommend the cancellation of the mineral or lease agreements to the DENR Secretary. Be that as it may, since the POA and MAB have no jurisdiction over the petition for cancellation of existing mining lease contracts of Macroasia, they could not have made any binding pronouncement that Macroasia had indeed abandoned the subject mining claims. Besides, it is the DENR Secretary who has the authority to cancel Macroasia's existing mining lease contracts whether on grounds of abandonment or any valid grounds for cancellation.

Decision in CA-G.R. SP No. 90828 not in accord with the law

With our resolution of the issue on the lack of jurisdiction of the POA and the MAB over petitions to cancel existing mining lease contracts or mineral agreements, it is thus clear that the May 18, 2006 Decision in CA-G.R. SP No. 90828 must be nullified for being not in accord with the law and the April 15, 2005 Decision in CA-G.R. SP No. 87931 must be upheld.

Notwithstanding the nullification of the May 18, 2006 Decision of the Special Tenth Division in CA-G.R. SP No. 90828, the rendition of two conflicting decisions of the two CA Divisions over the same challenged resolutions of the MAB should be avoided in the future as this is anathema to stability of judicial decisions and orderly administration of justice.

The chronology of events reveals the following:

- January 10, 2005 – petitioner Celestial filed its petition docketed as CA-G.R. SP No. 87931 with the CA.
- April 15, 2005 – the CA through its Twelfth Division rendered its Decision in CA-G.R. SP No. 87931 affirming the November 26, 2004 MAB Resolution.
- July 12, 2005 – respondent Blue Ridge filed its petition docketed as CA-G.R. SP No. 90828 with the CA. It is clear that the Blue Ridge petition was filed with the CA three months after the decision in CA-G.R. SP No. 87931 was promulgated.
- May 18, 2006 – the CA through its Special Tenth Division rendered its Decision setting aside the November 26, 2004 and July 12, 2005 Resolutions of the MAB and reinstating the October 24, 2000 MAB Decision.

From these facts, the CA Special Tenth Division should have ordered the consolidation of the petition in CA-G.R. SP No. 90828 by CA-G.R. SP No. 87931 pursuant to the Internal Rules of the CA, the latter having the earlier docket number. Had it done so, then the occurrence of the conflicting decisions could have been prevented. The CA Special Tenth Division should have abided by our ruling in *Nacuray v. NLRC*, where we held, "Consequently, a division cannot and should not review a case already passed upon by another Division of this Court. It is only proper, to allow the case to take its rest after having attained finality." [60]

The CA should take the appropriate steps, including the adoption or amendment of the rules, to see to it that cases or petitions arising from the same questioned decision, order, or resolution are consolidated to steer clear of contrary or opposing decisions of the different CA Divisions and ensure that incidents of similar nature will not be replicated.

G.R. No. 172936

No showing that the DENR Secretary gravely abused his discretion

Now, going to the substance of the petition in G.R. No. 172936. A scrutiny of the records shows that the DENR

Secretary did not gravely abuse his discretion in approving and signing MPSA Nos. 220-2005-IVB and 221-2005-IVB in favor of Macroasia.

Petitioner Blue Ridge anchors its rights on the May 18, 2006 Decision in CA-G.R. SP No. 90828, which we have unfortunately struck down. Blue Ridge's argument in assailing the approval and issuance of the subject MPSAs that it has been accorded preferential right by the CA has no leg to stand on.

The October 24, 2000 MAB Decision, nullified by the subsequent November 26, 2004 Resolution, is unequivocal that Blue Ridge was granted only "prior and preferential rights to FILE its mining application over the same mining claims." [61] What was accorded Blue Ridge was only the right to file the mining application but with no assurance that the application will be recommended for approval by the MGB and finally approved by the DENR Secretary.

Moreover, a preferential right would at most be an inchoate right to be given priority in the grant of a mining agreement. It has not yet been transformed into a legal and vested right unless approved by the MGB or DENR Secretary. Even if Blue Ridge has a preferential right over the subject mining claims, it is still within the competence and discretion of the DENR Secretary to grant mineral agreements to whomever he deems best to pursue the mining claims over and above the preferential status given to Blue Ridge. Besides, being simply a preferential right, it is ineffective to dissolve the pre-existing or subsisting mining lease contracts of Macroasia.

The DENR Secretary has full discretion in the grant of mineral agreements

Blue Ridge also argues that the Secretary gravely abused his discretion in approving the subject MPSAs without Macroasia complying with the mandatory requirements for mineral agreement applications under Sec. 35 of DENR AO 96-40. Petitioner specifically cited Sec. 36 of DENR AO 96-40 to the effect that "no Mineral Agreement shall be approved unless the requirements under this section are fully complied with and any adverse claim/protest/opposition thereto is finally resolved by the Panel of Arbitrators." Moreover, Blue Ridge contends that the MPSAs were approved even prior to the issuance of the Compliance Certificate [62] by the National Commission on Indigenous Peoples under the OP, which is a requisite pre-condition for the issuance of an MPSA.

We are not persuaded.

Blue Ridge cites Sec. 38 (not Sec. 36) of DENR AO 96-40 as basis for claiming that then DENR Secretary Defensor committed grave abuse of discretion in granting MPSA Nos. 220-2005-IVB and 221-2005-IVB to Macroasia. Petitioner's postulation cannot be entertained for the reason that the issuance of the mining agreements was not raised before the MGB Director and DENR Secretary, nor was it amply presented before the CA. There is even a counter-charge that Blue Ridge has not complied with the legal requirements for a mining application. The rule is established that questions raised for the first time on appeal before this Court are not proper and have to be rejected. Furthermore, the resolution of these factual issues would relegate the Court to a trier of facts. The Blue Ridge plea is hindered by the factual issue bar rule where factual questions are proscribed under Rule 65. Lastly, there was no exhaustion of administrative remedies before the MGB and DENR. Thus, Blue Ridge's petition must fail.

Primary jurisdiction of the DENR Secretary in determining whether to grant or not a mineral agreement

Verily, RA 7942, similar to PD 463, confers exclusive and primary jurisdiction on the DENR Secretary to approve mineral agreements, which is purely an administrative function within the scope of his powers and authority. In exercising such exclusive primary jurisdiction, the DENR Secretary, through the MGB, has the best competence to determine to whom mineral agreements are granted. Settled is the rule that the courts will defer to

the decisions of the administrative offices and agencies by reason of their expertise and experience in the matters assigned to them pursuant to the doctrine of primary jurisdiction. Administrative decisions on matter within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law.[63] Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion. Blue Ridge failed in this regard.

Delineation of powers and functions is accorded the three branches of government for the smooth functioning of the different governmental services. We will not disturb nor interfere in the exercise of purely administrative functions of the executive branch absent a clear showing of grave abuse of discretion.

Without a restraining order or injunction, litigation will not deter the DENR from exercising its functions

While it is true that the subject mining claims are under litigation, this does not preclude the DENR and its Secretary from carrying out their functions and duties without a restraining order or an injunctive writ. Otherwise, public interest and public service would unduly suffer by mere litigation of particular issues where government interests would be unduly affected. In the instant case, it must be borne in mind that the government has a stake in the subject mining claims. Also, Macroasia had various valid existing mining lease contracts over the subject mining lode claims issued by the DENR. Thus, Macroasia has an advantage over Blue Ridge and Celestial insofar as the administrative aspect of pursuing the mineral agreements is concerned.

WHEREFORE, the petitions under G.R. Nos. 169080, 172936, and 176229 are DISMISSED for lack of merit, while the petition under G.R. No. 176319 is hereby GRANTED. The assailed April 15, 2005 Decision and August 3, 2005 Resolution of the CA in CA-G.R. SP No. 87931 are hereby AFFIRMED IN TOTO. And the May 18, 2006 Decision and January 19, 2007 Resolution of the CA in CA-G.R. SP No. 90828 are hereby REVERSED and SET ASIDE. In view of the foregoing considerations, we find no grave abuse of discretion on the part of the then DENR Secretary in the approval and issuance of MPSA Nos. 220-2005-IVB and 221-2005-IVB. Costs against Celestial Nickel Mining Exploration Corporation and Blue Ridge Mineral Corporation.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Chico-Nazario, [*] JJ., concur.

[*] Per October 24, 2007 raffle.

[1] Rollo (G.R. No. 169080), pp. 9-87.

[2] Id. at 89-108. Penned by Associate Justice Martin S. Villarama (Chairperson) and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[3] Id. at 110-122.

[4] Rollo (G.R. No. 172936), pp. 3-53.

[5] Rollo (G.R. No. 176226), pp. 9-85, and rollo (G.R. No. 176319), pp. 14-77.

[6] Rollo (G.R. No. 176226), pp. 87-108, and rollo (G.R. No. 176319), pp. 79-100. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Andres B. Reyes, Jr. (Chairperson) and Aurora Santiago-Lagman.

- [7] Rollo (G.R. No. 176226), pp. 110-116, and rollo (G.R. No. 176319), pp. 102-108.
- [8] Rollo (G.R. No. 172936), p. 700.
- [9] Rollo (G.R. No. 176226), p. 1835.
- [10] Rollo (G.R. No. 176319), pp. 1270-1271.
- [11] Rollo (G.R. No. 169080), pp. 89-91.
- [12] *Id.* at 208-227.
- [13] *Id.*
- [14] Approved on May 17, 1975.
- [15] "Providing for a Modernized System of Administration and Disposition of Mineral Lands and to Promote and Encourage the Development and Exploitation Thereof," approved and became effective on May 17, 1974.
- [16] G.R. No. 85904, August 21, 1990, 188 SCRA 818.
- [17] See September 15, 1999 Memorandum from Task Force Team Leader Rolando Peña to the Chairman of MAB, rollo (G.R. No. 169080), p. 494, on the Report by Task Force Created to Investigate the Area Subject of MAB Case Nos. 056-97 and 057-97 at Brooke's Point, Palawan, *id.* at 495-503, pursuant to May 17, 1999 Special Order No. 99-521, *id.* at 493.
- [18] *Id.* at 229-240.
- [19] *Id.* at 241-258, Celestial's November 16, 2000 Motion for Reconsideration; and *id.* at 259-277, Macroasia's November 13, 2000 Motion for Reconsideration.
- [20] *Id.* at 278-296.
- [21] Revised Implementing Rules and Regulations of RA 7942, otherwise known as the Philippine Mining Act of 1995, vice DENR AO 95-23, series of 1995.
- [22] Rollo (G.R. No. 169080), pp. 297-308.
- [23] *Id.* at 307-308.
- [24] *Id.* at 309-371.
- [25] Rollo (G.R. No. 172936), pp. 437-447.
- [26] *Id.* at 448-455.
- [27] *Id.* at 456-519.
- [28] Rollo (G.R. No. 169080), pp. 372-403.
- [29] *Supra* note 3.
- [30] *Supra* note 1.
- [31] Rollo (G.R. No. 169080), pp. 1203-1215.
- [32] *Id.* at 1227.
- [33] *Supra* note 4.

- [34] Rollo (G.R. No. 176226), pp. 1687-1737.
- [35] Supra note 5.
- [36] Supra note 5.
- [37] Supra note 1, at 20-21.
- [38] Supra note 4, at 28-29.
- [39] Rollo (G.R. No. 176226), pp. 32-33.
- [40] Rollo (G.R. No. 176319), p. 15.
- [41] PD 463, Sec. 34.
- [42] EO 279, Sec. 1.
- [43] EO 279, Sec. 3.
- [44] EO 279, Sec. 4.
- [45] EO 279, Sec. 7.
- [46] G.R. No. 132475, September 11, 2000, Second Division Resolution.
- [47] Commissioner of Customs v. Esso Standard Eastern, Inc., No. L-28329, August 7, 1975, 66 SCRA 113, 119.
- [48] L.J. Gonzaga, STATUTES AND THEIR CONSTRUCTION 159 (1958).
- [49] Crawford, STATUTORY CONSTRUCTION 374-375 (1940).
- [50] Rollo (G.R. No. 169080), pp. 145-153.
- [51] H. Black, BLACK'S LAW DICTIONARY 472 (6th ed., 1990).
- [52] RULES OF COURT, Rule 2, Sec. 2.
- [53] RULES OF COURT, Rule 3, Sec. 2.
- [54] Id.
- [55] Ibonilla v. Province of Cebu, G.R. No. 97463, June 26, 1992, 210 SCRA 526.
- [56] Ralla v. Ralla, G.R. No. 78646, July 23, 1991, 199 SCRA 495.
- [57] Ibonilla v. Province of Cebu, supra.
- [58] See Duero v. Court of Appeals, G.R. No. 131282, January 4, 2002, 373 SCRA 11.
- [59] G.R. No. 158092, April 4, 2005, Resolution of the Second Division.
- [60] G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9, 18.
- [61] Rollo (G.R. No. 169080), p. 240.
- [62] Rollo (G.R. No. 172936), pp. 87-90.
- [63] Bernardo v. Court of Appeals, G.R. No. 124261, May 27, 2004, 429 SCRA 285, 300.

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