

HEUNGHWA INDUSTRY CO., LTD., PETITIONER, VS. DJ BUILDERS CORPORATION, RESPONDENT.

G.R. No. 169095. December 08, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, seeking to set aside the August 20, 2004 Decision[2] and August 1, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP Nos. 70001 and 71621.

The facts of the case, as aptly presented by the CA, are as follows:

Heunghwa Industry Co., Ltd. (petitioner) is a Korean corporation doing business in the Philippines, while DJ Builders Corporation (respondent) is a corporation duly organized under the laws of the Philippines. Petitioner was able to secure a contract with the Department of Public Works and Highways (DPWH) to construct the Roxas-Langogan Road in Palawan.

Petitioner entered into a subcontract agreement with respondent to do earthwork, sub base course and box culvert of said project in the amount of Php113, 228, 918.00. The agreement contained an arbitration clause. The agreed price was not fully paid; hence, on January 19, 2000, respondent filed before the Regional Trial Court (RTC) of Puerto Princesa, Branch 51, a Complaint for "Breach of Contract, Collection of Sum of Money with Application for Preliminary Injunction, Preliminary Attachment, and Prayer for Temporary Restraining Order and Damages" docketed as Civil Case No. 3421.[4]

Petitioner's Amended Answer[5] averred that it was not obliged to pay respondent because the latter caused the stoppage of work. Petitioner further claimed that it failed to collect from the DPWH due to respondent's poor equipment performance. The Amended Answer also contained a counterclaim for Php24,293,878.60.

On September 27, 2000, parties through their respective counsels, filed a "Joint Motion to Submit Specific Issues To The Construction Industry Arbitration Commission"[6] (CIAC), to wit:

- Parties would submit only specific issues to the CIAC for arbitration, leaving other claims to this Honorable Court for further hearing and adjudication. Specifically, the issues to be submitted to the CIAC are as follows:
- Manpower and equipment standby time;
- Unrecouped mobilization expenses;
- Retention;
- Discrepancy of billings; and
- Price escalation for fuel and oil usage.[7]

On the same day, the RTC issued an Order[8] granting the motion.

On October 9, 2000, petitioner, through its counsel, filed an "Urgent Manifestation"[9] praying that additional matters be referred to CIAC for arbitration, to wit:

- Additional mobilization costs incurred by [petitioner] for work abandoned by [respondent];
- Propriety of liquidated damages in favor of [petitioner] for delay incurred by [respondent];
- Propriety of downtime costs on a daily basis during the period of the existence of the previous temporary restraining order against [petitioner].[10]

On October 24, 2000, respondent filed with CIAC a Request for Adjudication[11] accompanied by a Complaint. Petitioner, in turn filed a "Reply/ Manifestation" informing the CIAC that it was abandoning the submission to CIAC and pursuing the case before the RTC. In respondent's Comment on petitioner's Manifestation, it prayed for CIAC to declare petitioner in default.

CIAC then issued an Order[12] dated November 27, 2000 ordering respondent to move for the dismissal of Civil Case No. 3421 pending before the RTC of Palawan and directing petitioner to file anew its answer. The said Order also denied respondent's motion to declare petitioner in default.

Respondent filed a Motion for Partial Reconsideration of the November 27, 2000 Order while petitioner moved to suspend the proceeding before the CIAC until the RTC had dismissed Civil Case No. 3421.

On January 8, 2000, CIAC issued an Order[13] setting aside its Order of November 27, 2000 by directing the dismissal of Civil Case No. 3421 only insofar as the five issues referred to it were concerned. It also directed respondent to file a request for adjudication. In compliance, respondent filed anew a "Revised Complaint"[14] which increased the amount of the claim from Php23,391,654.22 to Php65,393,773.42.

On February 22 2001, petitioner, through its new counsel, filed with the RTC a motion to withdraw the Order dated September 27, 2000 which referred the case to the CIAC, claiming it never authorized the referral. Respondent opposed the motion[15] contending that petitioner was already estopped from asking for the recall of the Order.

Petitioner filed in the CIAC its opposition to the second motion to declare it in default, with a motion to dismiss informing the CIAC that it was abandoning the submission of the case to it and asserting that the RTC had original and exclusive jurisdiction over Civil Case No. 3421, including the five issues referred to the CIAC.

On March 5, 2001, the CIAC denied petitioner's motion to dismiss on the ground that the November 27, 2000 Order had already been superseded by its Order of January 8, 2001.[16]

On March 13, 2001, the CIAC issued an Order setting the preliminary conference on April 10, 2001.[17]

On March 23, 2001 petitioner filed with the CIAC a motion for reconsideration of the March 5, 2001 Order.

For clarity, the succeeding proceedings before the RTC and CIAC are presented in graph form in chronological order.

RTC

CIAC

April 5, 2001 - Petitioner filed a Motion to Suspend proceedings because of the Motion to Recall it filed with the RTC.

April 6, 2001 - CIAC granted petitioner's motion and suspended the hearings dated April 10 and 17, 2001.

May 16, 2001 - the RTC issued a Resolution[18] granting petitioner's Motion to Recall.[19]

June 1, 2001- Respondent moved for a reconsideration of the May 16, 2001 Resolution and prayed for the dismissal of the case without prejudice to the filing of a complaint with the CIAC.[20]

June 11, 2001- Petitioner opposed respondent's motion for reconsideration and also prayed for the dismissal of the case but with prejudice.[21]

July 6, 2001 - The RTC denied respondent's motion for reconsideration but stated that respondent may file a formal motion to dismiss if it so desired.[22]

July 16, 2001- Respondent filed with the RTC a Motion to Dismiss[23] Civil Case No. 3421 praying for the dismissal of the complaint without prejudice to the filing of the proper complaint with the CIAC. On the same day, the RTC granted the motion without prejudice to petitioner's counterclaim.[24]

August 1, 2001- Petitioner moved for a reconsideration of the July 16, 2001 Order claiming it was denied due process.[25]

August 7, 2001 - Respondent filed with the CIAC a motion for the resumption of the proceedings claiming that the dismissal of Civil Case No. 3421 became final on August 3, 2001.

August 15, 2001 - Petitioner filed a counter-manifestation[26] asserting that the RTC Order dated July 16, 2001 was not yet final. Petitioner reiterated the prayer to dismiss the case.

August 27, 2001 - CIAC issued an Order maintaining the suspension but did not rule on petitioner's Motion to Dismiss.

January 22, 2002 - CIAC issued an Order setting the case for Preliminary Conference on February 7, 2002.

February 1, 2002 - Petitioner filed a Motion for Reconsideration of the January 22, 2002 Order which also included a prayer to resolve the Motion for Reconsideration of the July 16, 2001 Order.

February 5, 2002 - CIAC denied petitioner's Motion for Reconsideration.

February 7, 2002 - CIAC conducted a preliminary conference.[27]

March 13, 2002 - the RTC issued a Resolution[28] declaring the July 16, 2001 Order which dismissed the case "without force and effect" and set the case for hearing on May 30, 2002.

March 15, 2002 - Petitioner filed a Manifestation before the CIAC that the CIAC had no authority to hear the case.

March 18, 2002 - CIAC issued an Order setting the hearing on April 2, 2002.

March 21, 2002 - Petitioner filed a Manifestation/Motion that the RTC had recalled the July 16, 2001 Order and had asserted jurisdiction over the entire case and praying for the dismissal of the pending case.[29]

March 22, 2002 - CIAC issued an Order[30] denying the Motion to Dismiss filed by petitioner and holding that the CIAC had jurisdiction over the case.

March 25, 2002- Respondent moved for a reconsideration^[31] of the March 13, 2002 Order recalling the July 16, 2001 Order which petitioner opposed.

March 26, 2002 - CIAC ordered respondent to file a reply to petitioner's March 21, 2002 Manifestation.

June 17, 2002 - RTC denied respondent's Motion for Reconsideration.

The parties, without waiting for the reply required by the CIAC,^[32] filed two separate petitions for certiorari: petitioner, on April 5, 2002, docketed as CA-G.R. SP No. 70001; and respondent, on July 5, 2002, docketed as CA-G.R. SP No. 71621 with the CA.

In CA-G.R. SP No. 70001, petitioner assailed the denial by the CIAC of its motion to dismiss and sought to enjoin the CIAC from proceeding with the case.

In CA-G.R. SP No. 71621, respondent questioned the March 13, 2002 Order of the RTC which reinstated Civil Case No. 3421 as well as the Order dated June 17, 2002 which denied respondent's motion for reconsideration. Respondent also sought to restrain the RTC from further proceeding with the civil case.

In other words, petitioner is questioning the jurisdiction of the CIAC; while respondent is questioning the jurisdiction of the RTC over the case.

Both cases were consolidated by the CA.

The CA ruled against petitioner on procedural and substantive grounds.

On matters of procedure, the CA took note of the fact that petitioner did not file a motion for reconsideration of the March 22, 2002 Order of the CIAC and held that it is in violation of the well-settled rule that a motion for reconsideration should be filed to allow the respondent tribunal to correct its error before a petition can be entertained.^[33] Moreover, the CA ruled that it is well-settled that a denial of a motion to dismiss, being an interlocutory order, is not the proper subject for a petition for certiorari.^[34]

Moreover, the CA ruled against petitioner's main argument that the arbitration clause found in the subcontract agreement between the parties did not refer to CIAC as the arbitral body. The CA held that the CIAC had jurisdiction over the controversy because the construction agreement contained a provision to submit any dispute for arbitration, and there was a joint motion to submit certain issues to the CIAC for arbitration.^[35]

Anent petitioner's argument that its previous lawyer was not authorized to submit the case for arbitration, the CA held that what is required for a dispute to fall under the jurisdiction of the CIAC is for the parties to agree to submit to voluntary arbitration. Since the parties agreed to submit to voluntary arbitration in the construction contract, the authorization insisted upon by petitioner was a mere superfluity.^[36]

The CA further cited *National Irrigation Administration v. Court of Appeals*^[37] (NIA), where this Court ruled that active participation in the arbitration proceedings serves to estop a party from denying that it had in fact agreed to submit the dispute for arbitration.

Lastly, the CA found no merit in petitioner's prayer to remand the case to the CIAC.

Petitioner's Motion for Reconsideration was denied by the CA. Hence, herein petition raising the following assignment of errors:

A.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT RULED THAT THE PETITION SUFFERED FROM PROCEDURAL INFIRMITIES WHEN PETITIONER HEUNGHWA , IN VIEW OF

THE QUESTIONS OF LAW INVOLVED IN THE CASE, IMMEDIATELY INVOKED ITS AID BY WAY OF PETITION FOR CERTIORARI WITHOUT FIRST FILING A MOTION FOR RECONSIDERATION OF THE CIAC'S ORDER DATED 22 MARCH 2002 . THE COURT OF APPEALS FURTHER ERRED IN RULING THAT A DENIAL OF A MOTION TO DISMISS (IN REFERENCE TO THE ORDER DATED 22 MARCH 2002), BEING AN INTERLOCUTORY ORDER, IS NOT THE PROPER SUBJECT OF A PETITION FOR CERTIORARI.

B.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN CONFIRMING THE JURISDICTION OF THE CIAC OVER THE CASE. ITS RELIANCE ON THE NATIONAL IRRIGATION AUTHORITY VS. COURT OF APPEALS ("NIA VS. CA") WAS MISPLACED AS THE FACTS OF THE INSTANT CASE ARE SERIOUSLY AND SUBSTANTIALLY DIFFERENT FROM THOSE OF NIA VS. CA.

C.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING PETITIONER'S REQUEST TO AT LEAST REMAND THE CASE TO THE CIAC FOR FURTHER RECEPTION OF EVIDENCE IN THE INTEREST OF JUSTICE AND EQUITY AS PETITIONER COULD NOT HAVE AVAILED OF ITS OPPORTUNITY TO PRESENT ITS SIDE ON ACCOUNT OF ITS JURISDICTIONAL OBJECTION.[38]

The petition is devoid of merit.

The first assignment of error raises two issues: first, whether or not the non-filing of a motion for reconsideration was fatal to the petition for certiorari filed before the CA; and second, whether or not a petition for certiorari is the proper remedy to assail an order denying a motion to dismiss as in the case at bar .

As a general rule, a petition for certiorari before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions: (1) when the issue raised is purely of law, (2) when public interest is involved, or (3) in case of urgency. As a fourth exception, it has been held that the filing of a motion for reconsideration before availment of the remedy of certiorari is not a condition sine qua non when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.[39]

The Court agrees with petitioner that the main issue of the petition for certiorari filed before the CA undoubtedly involved a question of jurisdiction as to which between the RTC and the CIAC had authority to hear the case. Whether the subject matter falls within the exclusive jurisdiction of a quasi-judicial agency is a question of law.[40] Thus, given the circumstances present in the case at bar, the non-filing of a motion for reconsideration by petitioner to the CIAC Order should have been recognized as an exception to the rule.

Anent the second issue, petitioner argues that when its motion to dismiss was denied by the CIAC, the latter acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; thus, the same is the proper subject of a petition for certiorari.

As a general rule, an order denying a motion to dismiss cannot be the subject of a petition for certiorari. However, this Court has provided exceptions thereto:

Under certain situations, recourse to certiorari or mandamus is considered appropriate, i.e., (a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or (c) appeal would not prove to be a speedy and adequate remedy as when appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging

the court dockets by another futile case." [41] (Emphasis supplied)

The term "grave abuse of discretion" in its judicial sense connotes a capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The word "capricious," usually used in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action. [42]

The question then is: "Did the denial by the CIAC of the motion to dismiss constitute a patent grave abuse of discretion?"

Records show that the CIAC acted within its jurisdiction and it did not commit patent grave abuse of discretion when it issued the assailed Order denying petitioner's motion to dismiss. Thus, this Court rules in the negative.

Based on law and jurisprudence, the CIAC has jurisdiction over the present dispute.

The CIAC, in its assailed Order, correctly applied the doctrine laid down in *Philrock, Inc. v. Construction Industry Arbitration Commission* [43] (Philrock) where this Court held that what vested in the CIAC original and exclusive jurisdiction over the construction dispute was the agreement of the parties and not the Court's referral order. The CIAC aptly ruled that the recall of the referral order by the RTC did not deprive the CIAC of the jurisdiction it had already acquired, [44] thus:

x x x The position of CIAC is anchored on Executive Order No. 1008 (1985) which created CIAC and vested in it "original and exclusive jurisdiction" over construction disputes in construction projects in the Philippines provided the parties agreed to submit such disputes to arbitration. The basis of the Court referral is precisely the agreement of the parties in court, and that, by this agreement as well as by the court referral of the specified issues to arbitration, under Executive Order No. 1008 (1985), the CIAC had in fact acquired original and exclusive jurisdiction over these issues. [45]

In the case at bar, the RTC was indecisive of its authority and capacity to hear the case. Respondent first sought redress from the RTC for its claim against petitioner. Thereafter, upon motion by both counsels for petitioner and respondent, the RTC allowed the referral of five specific issues to the CIAC. However, the RTC later recalled the case from the CIAC because of the alleged lack of authority of the counsel for petitioner to submit the case for arbitration. The RTC recalled the case even if it already admitted its lack of expertise to deal with the intricacies of the construction business. [46]

Afterwards, the RTC issued a Resolution recommending that respondent file a motion to dismiss without prejudice to the counterclaim of petitioner, so that it could pursue arbitration proceedings under the CIAC. [47] Respondent complied with the recommendation of the RTC and filed a motion to dismiss which was granted by the said court. [48] Later, however, the RTC again asserted jurisdiction over the dispute because it apparently made a mistake in granting respondent's motion to dismiss without conducting any hearing on the motion. [49]

On the other hand, the CIAC's assertion of its jurisdiction over the dispute was consistent from the moment the RTC allowed the referral of specific issues to it.

Executive Order 1008 [50] grants to the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. In the case at the bar, it is undeniable that the controversy involves a construction dispute as can be seen from the issues referred to the CIAC, to wit:

- Manpower and equipment standby time;
- Unrecouped mobilization expenses;
- Retention;

- Discrepancy of billings; and
- Price escalation for fuel and oil usage.[51]

x x x x

The Court notes that the Subcontract Agreement[52] between the parties provides an arbitration clause, to wit:

Article 7
Arbitration

- Any controversy or claim between the Contractor and the Subcontractor arising out of or related to this Subcontract, or the breach thereof, shall be settled by arbitration, which shall be conducted in the same manner and under the same procedure as provided in the Prime Contract with Respect to claims between the Owner and the Contractor, except that a decision by the Owner or Consultant shall not be a condition precedent to arbitration. If the Prime Contract does not provide for arbitration or fails to specify the manner and procedure for arbitration, it shall be conducted in accordance with the law of the Philippines currently in effect unless the Parties mutually agree otherwise.[53] (Emphasis supplied)

However, petitioner insists that the General Conditions which form part of the Prime Contract provide for a specific venue for arbitration, to wit:

5.19.3. Any dispute shall be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules.[54]

The claim of petitioner is not plausible.

In *National Irrigation Administration v. Court of Appeals*[55] this Court recognized the new procedure in the arbitration of disputes before the CIAC, in this wise:

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

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

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

Under the present Rules of Procedure, for a particular construction contract to fall within the jurisdiction of CIAC, it is merely required that the parties agree to submit the same to voluntary arbitration. Unlike in the original version of Section 1, as applied in the *Tesco* case, the law as it now stands does not provide that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over the same. Rather, it is plain and clear that as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law, i.e., E.O. No. 1008.[56] (Emphasis and underscoring supplied)

Based on the foregoing, there are two acts which may vest the CIAC with jurisdiction over a construction dispute. One is the presence of an arbitration clause in a construction contract, and the other is the agreement by the parties to submit the dispute to the CIAC.

The first act is applicable to the case at bar. The bare fact that the parties incorporated an arbitration clause in their contract is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties. The rule is explicit that the CIAC has jurisdiction notwithstanding any reference made to another arbitral body.

It is well-settled that jurisdiction is conferred by law and cannot be waived by agreement or acts of the parties. Thus, the contention of petitioner that it never authorized its lawyer to submit the case for arbitration must likewise fail. Petitioner argues that notwithstanding the presence of an arbitration clause, there must be a subsequent consent by the parties to submit the case for arbitration. To stress, the CIAC was already vested with jurisdiction the moment both parties agreed to incorporate an arbitration clause in the sub-contract agreement. Thus, a subsequent consent by the parties would be superfluous and unnecessary.

It must be noted however that the reliance of the CIAC in its assailed Order on Philrock[57] is inaccurate. In Philrock, the Court ruled that the CIAC had jurisdiction over the case because of the agreement of the parties to refer the case to arbitration. In the case at bar, the agreement to refer specific issues to the CIAC is disputed by petitioner on the ground that such agreement was entered into by its counsel who was not authorized to do so. In addition, in Philrock, the petitioner therein had actively participated in the arbitration proceedings, while in the case at bar there were only two instances wherein petitioner participated, to wit: 1) the referral of five specific issues to the CIAC; and 2) the subsequent manifestation that additional matters be referred to the CIAC.

The foregoing notwithstanding, CIAC has jurisdiction over the construction dispute because of the mere presence of the arbitration clause in the subcontract agreement.

Thus, the CIAC did not commit any patent grave abuse of discretion, nor did it act without jurisdiction when it issued the assailed Order denying petitioner's motion to dismiss. Accordingly, there is no compelling reason for this Court to deviate from the rule that a denial of a motion to dismiss, absent a showing of lack of jurisdiction or grave abuse of discretion amounting to lack of or excess jurisdiction, being an interlocutory order, is not the proper subject of a petition for certiorari.

Anent the second assigned error, the Court notes that the reliance of the CA on NIA is inaccurate. In NIA,[58] this Court observed:

Moreover, it is undeniable that NIA agreed to submit the dispute for arbitration to the CIAC. NIA through its counsel actively participated in the arbitration proceedings by filing an answer with counterclaim, as well as its compliance wherein it nominated arbitrators to the proposed panel, participating in the deliberations on, and the formulation of the Terms of Reference of the arbitration proceeding, and examining the documents submitted by HYDRO after NIA asked for originals of the said documents."[59]

In the case at bar, the only participation that can be attributed to petitioner is the joint referral of specific issues to the CIAC and the manifestation praying that additional matters be referred to the CIAC. Both acts, however, have been disputed by petitioner because said acts were performed by their lawyer who was not authorized to submit the case for arbitration. And even if these were duly authorized, this would still not change the correct finding of the CA that the CIAC had jurisdiction over the dispute because, as has been earlier stressed, the arbitration clause in the subcontract agreement ipso facto vested the CIAC with jurisdiction.

In passing, even the RTC in its Resolution recognized the authority of the CIAC to hear the case, to wit:

Courts cannot and will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. And undoubtedly in this case, the CIAC it cannot be denied, is that administrative tribunal.[60] (Emphasis supplied)

It puzzles this Court why petitioner would insist that the RTC should hear the case when the CIAC has the required skill and expertise in addressing construction disputes. Records will bear out the fact that petitioner refused to and did not participate in the CIAC proceedings. In its defense, petitioner cited jurisprudence to the effect that active participation before a quasi-judicial body would be tantamount to an invocation of the latter bodies' jurisdiction and a willingness to abide by the resolution of the case.[61] Pursuant to such doctrine, petitioner argued that had it participated in the CIAC proceedings, it would have been barred from impugning the jurisdiction of the CIAC.

Petitioner cannot presume that it would have been estopped from questioning the jurisdiction of the CIAC had it participated in the proceedings. In fact, estoppel is a matter for the court to consider. The doctrine of laches or of stale demands is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.[62] The Court always looks into the attendant circumstances of the case so as not to subvert public policy.[63] Given that petitioner questioned the jurisdiction of the CIAC from the beginning, it was not remiss in enforcing its right. Hence, petitioner's claim that it would have been estopped is premature.

The Court finds the last assigned error to be without merit.

It is well to note that in its petition for certiorari[64] filed with the CA on April 9, 2002, petitioner prayed for the issuance of a temporary restraining order and a writ of preliminary injunction to enjoin the CIAC from hearing the case. On September 27, 2002, the CIAC promulgated its decision awarding Php31,119,465.81 to respondent. It is unfortunate for petitioner that the CA did not timely act on its petition. Records show that the temporary restraining order[65] was issued only on October 15, 2002 and a writ of preliminary injunction[66] was granted on December 11, 2002, long after the CIAC had concluded its proceedings. The only effect of the writ was to enjoin temporarily the enforcement of the award of the CIAC.

The Court notes that had the CA performed its duty promptly, then this present petition could have been avoided as the CIAC rules allow for the reopening of hearings, to wit:

SECTION 13.14 Reopening of hearing - The hearing may be reopened by the Arbitral Tribunal on their own motion or upon the request of any party, upon good cause shown, at any time before the award is rendered. When hearings are thus reopened, the effective date for the closing of the hearing shall be the date of closing of the reopened hearing.(Emphasis supplied)

But because of the belated action of the CA, the CIAC had to proceed with the hearing notwithstanding the non-participation of petitioner.

Under the CIAC rules, even without the participation of petitioner in the proceedings, the CIAC was still required to proceed with the hearing of the construction dispute. Section 4.2 of the CIAC rules provides:

SECTION 4.2 Failure or refusal to arbitrate - Where the jurisdiction of CIAC is properly invoked by the filing of a Request for Arbitration in accordance with these Rules, the failure despite due notice which amounts to a refusal of the Respondent to arbitrate, shall not stay the proceedings notwithstanding the absence or lack of participation of the Respondent. In such case, CIAC shall appoint the arbitrator/s in accordance with these

Rules. Arbitration proceedings shall continue, and the award shall be made after receiving the evidence of the Claimant. (Emphasis and underscoring supplied)

This Court finds that the CIAC simply followed its rules when it proceeded with the hearing of the dispute notwithstanding that petitioner refused to participate therein.

To reiterate, the proceedings before the CIAC were valid, for the same had been conducted within its authority and jurisdiction and in accordance with the rules of procedure provided by Section 4.2 of the CIAC Rules.

The ruling of the Supreme Court in *Lastimoso v. Asayo*[67] is instructive:

x x x x

In addition, it is also understandable why respondent immediately resorted to the remedy of certiorari instead of pursuing his motion for reconsideration of the PNP Chief's decision as an appeal before the National Appellate Board (NAB). It was quite easy to get confused as to which body had jurisdiction over his case. The complaint filed against respondent could fall under both Sections 41 and 42 of Republic Act (R.A.) No. 6975 or the Department of Interior and Local Government Act of 1990. Section 41 states that citizens' complaints should be brought before the People's Law Enforcement Board (PLEB), while Section 42 states that it is the PNP Chief who has authority to immediately remove or dismiss a PNP member who is guilty of conduct unbecoming of a police officer.

It was only in *Quiambao v. Court of Appeals*, promulgated in 2005 or after respondent had already filed the petition for certiorari with the trial court, when the Court resolved the issue of which body has jurisdiction over cases that fall under both Sections 41 and 42 of R.A. No. 6975. x x x

With the foregoing peculiar circumstances in this case, respondent should not be deprived of the opportunity to fully ventilate his arguments against the factual findings of the PNP Chief. x x x

x x x x

Thus, the opportunity to pursue an appeal before the NAB should be deemed available to respondent in the higher interest of substantial justice.[68](Emphasis supplied)

In *Lastimoso*, this Court allowed respondent to appeal his case before the proper agency because of the confusion as to which agency had jurisdiction over the case. In the case at bar, law and supporting jurisprudence are clear and leave no room for interpretation that the CIAC has jurisdiction over the present controversy.

The proceedings cannot then be voided merely because of the non-participation of petitioner. Section 4.2 of the CIAC Rules is clear and it leaves no room for interpretation. Therefore, petitioner's prayer that the case be remanded to CIAC in order that it may be given an opportunity to present evidence is untenable. Petitioner had its chance and lost it, more importantly so, by its own choice. This Court will not afford a relief that is apparently inconsistent with the law.

WHEREFORE, the petition is denied for lack of merit. The August 20, 2004 Decision and August 1, 2005 Resolution of the Court of Appeals in CA-G.R. SP Nos. 70001 and 71621 are AFFIRMED.

Double costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 3-40.

[2] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa; id. at 51-65.

[3] Id. at 66-67.

[4] Rollo, pp. 131-145.

[5] Id. at 151-158.

[6] Id. at 159-162.

[7] Id. at 160.

[8] Rollo, p. 163.

[9] CA rollo, CA-G..R. SP No. 71621, p. 126.

[10] Id.

[11] Id. at 127.

[12] CA rollo, CA-G.R. SP No. 70001, pp. 120-121.

[13] CA rollo, CA-G.R. SP No. 71621, pp. 164-165.

[14] Rollo, pp. 169-179.

[15] CA rollo, CA-G.R. SP No. 71621, pp. 166-171.

[16] CA rollo, CA-G.R. SP No. 70001, pp. 136-137; CA rollo, CA-G.R. SP No. 71621, pp. 164-165.

[17] Id. at 138-141.

[18] CA rollo, CA-G.R. SP No. 71621, pp. 172-176.

[19] CA rollo, CA-G.R. SP No. 70001, pp. 142-146.

[20] CA rollo, CA-G.R. SP No. 71621, pp. 177-181.

[21] Id. at 182-185.

[22] Id. at 188-189.

[23] CA rollo, CA-G.R. SP No. 70001, pp.149-150.

[24] CA rollo, CA-G.R. SP No 71621, p. 193; CA rollo, CA-G.R. SP No. 70001, pp. 149-150.

[25] CA rollo, CA-G.R. SP No. 71621, pp. 194-198.

[26] CA rollo, CA-G.R. SP No. 70001, pp. 153-160.

[27] On February 19, 2002, petitioner filed a petition for certiorari with the Court of Appeals docketed as CA-GR SP No. 69208 questioning the CIAC Order setting the case for preliminary conference which was dismissed for failure to attach the authorization of the General Manager to sign the Certificate of Non-Forum Shopping.

[28] CA rollo, CA-G.R. SP No. 70001, pp. 170-172.

[29] CA rollo, CA-G.R. SP No. 70001, pp. 181-186.

[30] Id. at 57-61; CA rollo. CA-G.R. SP No. 71621, pp. 225-229.

[31] CA rollo, CA-G.R. SP No. 71621, pp. 211-216.

[32] Not raised as an issue by any of the parties.

[33] Rollo, p. 61.

[34] Id.

[35] Id. at 63.

[36] Id.

[37] 376 Phil. 362 (1999).

[38] Rollo, pp. 22-23.

[39] Philippine International Trading Corporation v. Commission on Audit, 461 Phil. 737, 745 (2003).

[40] Javellana v. Presiding Judge, RTC, Branch 30, Manila, G.R. No. 139067, November 23, 2004, 443 SCRA 497, 506.

[41] Far East Bank and Trust Company v. Court of Appeals, 395 Phil. 701, 709-710 (2000).

[42] Olanolan v. Commission on Elections, G.R. No. 165491, March 31, 2005, 454 SCRA 807, 814.

[43] 412 Phil. 236 (2001).

[44] Rollo p. 221.

[45] Id. at 223.

[46] Id. at 185.

[47] Id. at 187.

[48] Id. at 189.

[49] Id. at 208.

[50] An Act Creating an Arbitration Machinery for the Philippine Construction Industry, February 4, 1985.

[51] Rollo, p. 163.

[52] Id. at 117- 130.

[53] Id. at 125.

[54] Id. at 30.

[55] Supra note 37.

[56] Id. at 374-375.

[57] Supra note 43.

[58] Supra note 37.

[59] Id. at 375.

[60] Rollo, p. 185.

[61] Rollo, p. 35.

[62] Oscar M. Herrera, Remedial Law: Civil Procedure, 2000 edition, p. 67.

[63] Parco v. Court of Appeals, 197 Phil. 240 (1982).

[64] CA rollo, CA-G.R. SP No. 70001, pp. 2-46.

[65] CA rollo, CA-G.R. SP No. 70001, Vol. II, pp. 368-370.

[66] Id. at 455-457.

[67] G.R. No. 154243, December 4, 2007, 539 SCRA 381.

[68] Id. at 386-387.

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