

PHILIPPINE ECONOMIC ZONE AUTHORITY, PETITIONER, VS. EDISON (BATAAN) COGENERATION CORPORATION, RESPONDENT.*G.R. No. 179537. October 23, 2009*

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-179537/>**CARPIO MORALES, J.:**

Petitioner Philippine Economic Zone Authority (PEZA) and Edison (Bataan) Cogeneration Corporation (respondent) entered into a Power Supply and Purchase Agreement (PSPA or agreement) for a 10-year period effective October 25, 1997 whereby respondent undertook to construct, operate, and maintain a power plant which would sell, supply and deliver electricity to PEZA for resale to business locators in the Bataan Economic Processing Zone.

In the course of the discharge of its obligation, respondent requested from PEZA a tariff increase with a mechanism for adjustment of the cost of fuel and lubricating oil, which request it reiterated on March 5, 2004.

PEZA did not respond to both requests, however, drawing respondent to write PEZA on May 3, 2004. Citing a tariff increase which PEZA granted to the East Asia Utilities Corporation (EAUC), another supplier of electricity in the Mactan Economic Zone, respondent informed PEZA of a violation of its obligation under Clause 4.9 of the PSPA not to give preferential treatment to other power suppliers.

After the lapse of 90 days, respondent terminated the PSPA, invoking its right thereunder, and demanded P708,691,543.00 as pre-termination fee. PEZA disputed respondent's right to terminate the agreement and refused to pay the pre-termination fee, prompting respondent to request PEZA to submit the dispute to arbitration pursuant to the arbitration clause of the PSPA.

Petitioner refused to submit to arbitration, however, prompting respondent to file a Complaint[1] against PEZA for specific performance before the Regional Trial Court (RTC) of Pasay, alleging that, inter alia:

x x x x

- Under Clauses 14.1 and 14.2 of the Agreement, the dispute shall be resolved through arbitration before an Arbitration Committee composed of one representative of each party and a third member who shall be mutually acceptable to the parties: x x x

x x x

- Conformably with the Agreement, plaintiff notified defendant in a letter dated September 6, 2004 requesting that the parties submit their dispute to arbitration. In a letter dated September 8, 2004, which defendant received on the same date, defendant unjustifiably refused to comply with the request for arbitration, in violation of its undertaking under the Agreement. Defendant likewise refused to nominate its representative to the Arbitration Committee as required by the Agreement.

- Under Section 8 of Republic Act No. 876 (1953), otherwise known as the Arbitration Law, (a) if either party to the contract fails or refuses to name his arbitrator within 15 days after receipt of the demand for arbitration;

or (b) if the arbitrators appointed by each party to the contract, or appointed by one party to the contract and by the proper court, shall fail to agree upon or to select the third arbitrator, then this Honorable Court shall appoint the arbitrator or arbitrators.[2] (Emphasis and underscoring supplied)

Respondent accordingly prayed for judgment

x x x (a) designating (i) an arbitrator to represent defendant; and (ii) the third arbitrator who shall act as Chairman of the Arbitration Committee; and (b) referring the attached Request for Arbitration to the Arbitration Committee to commence the arbitration.[3]

and for other just and equitable reliefs.

In its Answer,[4] PEZA (hereafter petitioner):

- ADMIT[TED] the allegations in paragraphs 1, 2, 3, 4, and 6 of the complaint, with the qualification that the alleged dispute subject of the plaintiff's Request for Arbitration dated October 20, 2004 is not an arbitrable issue, considering that the provision on pre-termination fee in the Power Sales and Purchase Agreement (PSPA), is gravely onerous, unconscionable, greatly disadvantageous to the government, against public policy and therefore invalid and unenforceable.

- ADMIT[TED] the allegation in paragraph 5 of the complaint with the qualification that the refusal of the defendant to arbitrate is justified considering that the provision on the pre-termination fee subject of the plaintiff's Request for Arbitration is invalid and unenforceable. Moreover, the pre-termination of the PSPA is whimsical, has no valid basis and in violation of the provisions thereof, constituting breach of contract on the part of the plaintiff.[5] (Emphasis and underscoring supplied)

X x x x

Respondent thereafter filed a Reply and Motion to Render Judgment on the Pleadings,[6] contending that since petitioner

x x x does not challenge the fact that (a) there is a dispute between the parties; (b) the dispute must be resolved through arbitration before a three-member arbitration committee; and (c) defendant refused to submit the dispute to arbitration by naming its representative in the arbitration committee,

judgment may be rendered directing the appointment of the two other members to complete the composition of the arbitration committee that will resolve the dispute of the parties.[7]

By Order of April 5, 2005, Branch 118 of the Pasay City RTC granted respondent's Motion to Render Judgment on the Pleadings, disposing as follows:

WHEREFORE, all the foregoing considered, this Court hereby renders judgment in favor of the plaintiff and against the defendant. Pursuant to Section 8 of RA 876, also known as the Arbitration Law, and Power Sales and Purchase Agreement, this Court hereby appoints, subject to their agreement as arbitrators, retired Supreme Court Chief Justice Andres Narvasa, as chairman of the committee, and retired Supreme Court Justices Hugo Gutierrez, and Justice Jose Y. Feria, as defendant's and plaintiff's representative, respectively, to the arbitration committee. Accordingly, let the Request for Arbitration be immediately referred to the Arbitration Committee so that it can commence with the arbitration.

SO ORDERED.[8] (Underscoring supplied)

On appeal,[9] the Court of Appeals, by Decision of April 10, 2007, affirmed the RTC Order.[10] Its Motion for Reconsideration[11] having been denied,[12] petitioner filed the present Petition for Review on Certiorari,[13] faulting the appellate court

I

... WHEN IT DISMISSED PETITIONER'S APPEAL AND AFFIRMED THE 05 APRIL 2004 ORDER OF THE TRIAL COURT WHICH RENDERED JUDGMENT ON THE PLEADINGS, DESPITE THE FACT THAT PETITIONER'S ANSWER TENDERED AN ISSUE.

II

... WHEN IT AFFIRMED THE ORDER OF THE TRIAL COURT WHICH REFERRED RESPONDENT'S REQUEST FOR ARBITRATION DESPITE THE FACT THAT THE ISSUE PRESENTED BY THE RESPONDENT IS NOT AN ARBITRABLE ISSUE.[14] (Underscoring supplied)

The petition fails.

The dispute raised by respondent calls for a proceeding under Section 6 of Republic Act No. 876, "An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes" which reads:

SECTION 6. Hearing by court. -- A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

x x x x (Underscoring supplied)

R.A. No. 876 "explicitly confines the court's authority only to the determination of whether or not there is an agreement in writing providing for arbitration." [15] Given petitioner's admission of the material allegations of respondent's complaint including the existence of a written agreement to resolve disputes through arbitration, the assailed appellate court's affirmance of the trial court's grant of respondent's Motion for Judgment on the Pleadings is in order.

Petitioner argues that it tendered an issue in its Answer as it disputed the legality of the pre-termination fee clause of the PSPA. Even assuming *arguendo* that the clause is illegal, it would not affect the agreement between petitioner and respondent to resolve their dispute by arbitration.

The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is a part comes to an end.

The separability of the arbitration agreement is especially significant to the determination of whether the invalidity of the main contract also nullifies the arbitration clause. Indeed, the doctrine denotes that the invalidity of the main contract, also referred to as the "container" contract, does not affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable.[16] (Emphasis in the original; underscoring supplied)

Petitioner nevertheless contends that the legality of the pre-termination fee clause is not arbitrable, citing

Gonzales v. Climax Mining Ltd. [17] which declared that the therein complaint should be brought before the regular courts, and not before an arbitral tribunal, as it involved a judicial issue. Held the Court:

We agree that the case should not be brought under the ambit of the Arbitration Law xxx. The question of validity of the contract containing the agreement to submit to arbitration will affect the applicability of the arbitration clause itself. A party cannot rely on the contract and claim rights or obligations under it and at the same time impugn its existence or validity. Indeed, litigants are enjoined from taking inconsistent positions. As previously discussed, the complaint should have been filed before the regular courts as it involved issues which are judicial in nature.[18]

The ruling in Gonzales was, on motion for reconsideration filed by the parties, modified, however, in this wise:

x x x The adjudication of the petition in G.R. No. 167994 effectively modifies part of the Decision dated 28 February 2005 in G.R. No. 161957. Hence, we now hold that the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself. A contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration. That is exactly the situation that the separability doctrine, as well as jurisprudence applying it, seeks to avoid. We add that when it was declared in G.R. No. 161957 that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the nullification of the main contract on the ground of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues.[19] (Emphasis and underscoring supplied)

It bears noting that respondent does not seek to nullify the main contract. It merely submits these issues for resolution by the arbitration committee, viz:

- Whether or not the interest of Claimant in the project or its economic return in its investment was materially reduced as a result of any laws or regulations of the Philippine Government or any agency or body under its control;
- Whether or not the parties failed to reach an agreement on the amendments to the Agreement within 90 days from notice to respondent on May 3, 2004 of the material reduction in claimant's economic return under the Agreement;
- Whether or not as a result of (a) and (b) above, Claimant is entitled to terminate the Agreement;
- Whether or not Respondent accorded preferential treatment to EAUC in violation of the Agreement;
- Whether or not as a result of (d) above, Claimant is entitled to terminate the Agreement;
- Whether or not Claimant is entitled to a termination fee equivalent to P708,691,543.00; and
- Who between Claimant and Respondent shall bear the cost and expenses of the arbitration, including arbitrator's fees, administrative expenses and legal fees.[20]

In fine, the issues raised by respondent are subject to arbitration in accordance with the arbitration clause in the parties' agreement.

WHEREFORE, the petition is DENIED.

Quisumbing, (Chairperson), Carpio[*], and Bersamin[**], JJ., concur.

Abad, J., see concurring opinion.

[*] Additional member per Special Order No. 757 dated October 12, 2009.

[**] Additional member per Special Order No. 765 dated October 21, 2009.

[1] Records, pp. 3-7.

[2] Id. at 4-5.

[3] Id. at 5.

[4] Id. at 17-25.

[5] Id. at 17.

[6] Id. at 52-66.

[7] Id. at 54-55.

[8] Id. at 223.

[9] Id. at 251-252.

[10] Penned by Court of Appeals Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Estela M. Perlas-Bernabe. CA rollo, pp. 339-349.

[11] Id. at 356-364.

[12] Id. at 382.

[13] Rollo, pp. 9-48.

[14] Id. at 26.

[15] *Gonzales v. Climax Mining, Ltd.*, G.R. No.167994, January 22, 2007, 512 SCRA 148, 169.

[16] Id. at 170.

[17] G.R. No. 161957, February 28, 2005, 452 SCRA 607.

[18] Id., at 625.

[19] *Gonzales v. Climax Mining, Ltd.*, G.R. No. 167994, January 22, 2007, 512 SCRA 148, 172-173.

[20] Records, pp. 73-74.

CONCURRING OPINION

ABAD, J.:

Petitioner Philippine Economic Zone Authority (PEZA)[1] and respondent Edison (Bataan) Cogeneration Corporation (Edison) entered into a 10-year power supply and purchase agreement (agreement) that was to take effect on October 25, 1997. Edison undertook to construct, operate, and maintain a power plant that would supply electricity to establishments operating at the PEZA zone in Bataan.

On October 22, 2004 Edison filed a complaint for specific performance against PEZA before the Regional Trial Court of Pasay City in Civil Case 04-0736-CFM.[2] The complaint alleged in substance that a dispute arose between Edison and PEZA rooted on their agreement that Edison was to supply power to PEZA at a rate that was in some way pegged to what National Power Corporation (NPC) charged its Luzon utility customers.

Edison further alleged that, because the NPC began in 1999 to yield to popular demand for lower rates than what it costs to generate power, it was compelled to sell the power it produced to PEZA at artificially low rates. Still Edison managed to make a profit because of NPC's fuel support scheme. When its side contract with NPC ended, however, Edison claimed that PEZA unjustifiably rejected its request for tariff rate increases to which it was entitled under their agreement.

Edison also claimed that PEZA granted tariff rate relief to a power supplier in Cebu but would not consider extending such relief to Edison, entitling the latter to terminate their agreement and recover a pre-termination fee of over P708 million. Because PEZA refused Edison's demand for an end to their agreement and for PEZA to pay pre-termination fee arising from its violation of the agreement, Edison claimed a right to resort to arbitration as their agreement provided. But PEZA, according to Edison, declined its demands, entitling it to come to court conformably with the terms of their agreement and seek an order for the constitution of a committee of arbitrators to hear their disputes.

In its answer to the complaint,[3] while PEZA admitted that Edison has claims against it for alleged refusal to grant tariff rate adjustments that it had given other power suppliers and that PEZA had refused to pay the pre-termination fee Edison asked, PEZA claimed that the supposed disputes were not proper for arbitration since the pre-termination fee in the agreement was "gravely onerous, unconscionable, greatly disadvantageous to the government, against public policy, and therefore, invalid and unenforceable."

PEZA further claimed a) that Edison's termination of the agreement was whimsical and baseless, in itself a breach of the agreement; b) that during the negotiations for the requested power rate increase, Edison declined to submit relevant data that PEZA needed to act on the request; c) that, in utter bad faith, Edison cut off power supply to PEZA on August 13, 2004; d) that Edison's motive was to maneuver PEZA into paying its demand for unconscionable and illegal pre-termination fee rather than to get its tariff rate adjusted; and e) that this ill motive was evidenced by the fact that Edison had been negotiating to sell its power engines to NPC even before it asked PEZA for tariff rate adjustment.

Edison filed a reply and a motion to render judgment on the pleadings, contending that since PEZA did not challenge the fact that there are disputes between the parties, Edison is entitled to a resolution of such disputes by a three-member arbitration committee to be constituted by the RTC. Acting on this motion and on the belief that PEZA's answer did not tender a genuine issue, on April 5, 2005 the RTC issued an order constituting an Arbitration Committee with Chief Justice Andres Narvasa as chairman and retired Supreme Court Justices Hugo Gutierrez and Jose Y. Feria, as members with power to arbitrate the disputes between Edison and PEZA. The RTC denied PEZA's motion for reconsideration of the order.

On appeal to the Court of Appeals, the latter court affirmed the RTC's order under a decision dated April 10, 2007, prompting PEZA to come to this Court on petition for review by certiorari.

I fully agree with the ponencia of Justice Conchita Carpio Morales in holding that PEZA's answer to the complaint acknowledged the existence of the remedy of arbitration concerning any dispute that might arise between them involving their agreement, in this case, PEZA's alleged refusal to grant Edison tariff rate adjustments as their agreement provided. PEZA's own answer alleged that it did not yet deny the requested tariff rate adjustments and that the delay in its action on such request had been brought about by Edison's refusal to submit the documents and data required of it. Whether or not PEZA did deny such request itself actually presents a dispute between the parties. Arbitration of the disputes between them respecting alleged violations of the agreement is, therefore, inevitable.

I would like to add, however, that in voting to grant the petition, it is clear to me that the Court does not resolve

today the issue that PEZA raises: whether or not the pre-termination clause of its agreement with Edison is "gravely onerous, unconscionable, greatly disadvantageous to the government, against public policy, and therefore, invalid and unenforceable." In fact, if the Arbitration Committee should uphold its defense that it had not arbitrarily denied Edison's claim for tariff rate adjustment, the issue concerning the invalidity of the pre-termination clause of their agreement may not even come to pass.

[1] A government-owned corporation created by P.D. 66 (1972).

[2] Complaint, rollo, p. 121, in relation to the Request for Arbitration dated October 20, 2004, p. 260.

[3] Answer, id. at 126.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.