

**MID-ISLANDS POWER GENERATION CORPORATION, PETITIONER,
VS. COURT OF APPEALS, POWER ONE CORPORATION, ISLANDS GRID
NETWORK PHILIPPINES, INC., DAVID TAN, AND MANUEL LAURON,
RESPONDE...***G.R. No. 189191. February 29, 2012*

Ponente: SERENO, J.

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Before the Court is a Petition for Certiorari and Prohibition filed under Rule 65 of the Rules of Court, assailing the 23 December 2008 and 23 June 2009 Resolutions of the Court of Appeals (CA).[1] The core issue at bench is whether the CA had the authority to grant a Motion for Extension to file a petition for certiorari, in the light of our Resolution in A.M. No. 07-7-12-SC, which took effect on 27 December 2007.

Facts

The case stems from the Complaint for injunction with urgent prayer for temporary restraining order and preliminary injunction (Civil Case No. 70957-SJ) filed by MindoroTech Services Inc. (MindoroTech) and petitioner Mid-Islands Power Generation Corporation (Mid-Islands Power) against respondents Power One Corporation (Power One), Islands Grid Network Philippines, Inc. (Islands Grid), David Tan (Tan), and Manuel Lauron (Lauron).

Oriental Mindoro Electric Cooperative, Inc. (ORMECO), an electric distribution cooperative, entered into an Electric Supply Agreement (ESA) with Power One as the former's new electric power provider. Pursuant to the agreement, Power One was permitted to install, construct or acquire, and operate an electric generating facility in Oriental Mindoro. It was also authorized to assign its rights, interests, and obligations under the ESA to an affiliate or to a special purpose corporation that it may organize for the project (project company). Furthermore, Power One was empowered to form other corporations for the purpose of undertaking various aspects of the ESA. As part of the agreement, it was given the right to use the existing Calapan Diesel Power Plant in Oriental Mindoro.

Power One invited several potential partners to join it in a business venture involving the management and operations of its ESA with ORMECO and its existing ESA with Central Negros Electric Cooperative (CENECO). Under the proposal, they would form a joint venture to be called "Mid-Islands Power Generation Corporation." This proposed project company would assume all the interests, rights, and obligations of Power One under its ESA with CENECO (ESA-CENECO) and with ORMECO (ESA-ORMECO). Consequently, on 4 June 2004, Power One entered into a Memorandum of Agreement[2] (MOA) with Victor Pascual, Faustino Lim, Philip Uy, and Viscal Development Corporation. The MOA stated that the new company, Mid-Islands Power, would own and implement Phase 1 of ESA-CENECO, which involved existing and proposed power plants in Alijis District, Bacolod City; and Phase 1 of ESA-ORMECO, which concerned the existing Calapan Diesel Power Plant in Calapan City.

Under the agreement, the new partners would subscribe to 69.5%; Power One, through its affiliate company Islands Grid, to 29.5%; and a certain Kenneth Uy, to the remaining 1% of the outstanding capital stock of Mid-Islands Power. It was further stipulated that the management and operations of the newly organized project company, Mid-Islands Power, would be the responsibility of the new co-partners of Power One. Thus, on 15 October 2004, by virtue of an Assignment Memorandum,[3] Power One assigned its two ESAs to Mid-Islands Power and notified ORMECO accordingly. In turn, ORMECO acknowledged the assumption by Mid-Islands Power of the rights, interests, and obligations of Power One under the ESA-ORMECO.

In July 2005 Victor Pascual, Faustino Lim, Philip Uy, and Container Corporation of the Philippines[4] (collectively, Pascual et al.) entered into a Revised Memorandum of Agreement[5] (Revised MOA) with Power One, in which the parties agreed to shelve the CENECO project. Instead, they decided to focus on Phase 1 of the ORMECO project and to add Phase 2 of the ESA-ORMECO to their joint venture. Furthermore, the parties stipulated that they would form “an O & M Company,” which would operate and manage the Calapan Diesel Power Plant on behalf of Mid-Islands Power. It was agreed that Pascual et al. would own and subscribe to 80% and Power One, through Islands Grid, to 20% of the stocks of the “O & M Company” that would be formed.

The business relations between Power One and Pascual et al. eventually turned thorny. On various dates in May 2006, respondent Tan – on behalf of Power One – sent correspondences[6] to Mid-Islands Power. An issue raised therein was the latter’s inability to fulfill its commitment to complete certain aspects of the ORMECO project within their set deadlines. Power One reiterated that the timely completion of Phase 1 of the ESA would be critical to the achievement of their profit goals. It insisted that Mid-Islands Power should decide and act faster so that the delays in finishing the projects would be cut by half. For its part, Mid-Islands Power broached several issues concerning its monetary advances, future financing arrangements, and proposed revision of the provisions on shareholdings in their Revised MOA. A further exchange of correspondences ensued,[7] with both parties raising various concerns, such as lack of the required financing for the ORMECO project; the inability of Pascual et al., through Mid-Islands Power, to complete Phases 1 and 2 of the ORMECO project; and inefficiency in the management of the Mid-Islands Power joint venture.

Consequently, in a demand letter[8] sent to Pascual et al. through Mid-Islands, Power One asked for the specific performance of Pascual et al.’s obligations under the Revised MOA. Power One asserted that the continued delay in finishing the ORMECO project had already resulted in a reduction of the electricity generated to less than 50% of capacity. Power One then informed Mid-Islands that their right to supply power to ORMECO and NPC, as well as to occupy and operate the leased facilities of NAPOCOR, had not taken effect.

Power One alleged that it had already informed ORMECO that the assignment of the ESA in favor of Mid-Islands Power had not taken effect as of 30 April 2006 because of the latter’s inability to fulfill its obligations under the Revised MOA. Furthermore, Power One informed Mid-Islands Power that ORMECO had supposedly noticed that another company, MindoroTech, had been operating the Calapan Diesel Power Plant in violation of the ESA. Power One thus sought an explanation of the role of MindoroTech and demanded that Mid-Islands provide a clear plan on how the latter would complete Phase 1 of the ORMECO project. Subsequently, on 19 August 2006, Power One and Islands Grid barred Mid-Islands Power and MindoroTech from entering the Calapan Diesel Power Plant.

On 11 September 2006, MindoroTech and petitioner Mid-Islands Power filed a Complaint (Civil Case No. 70957-SJ) against respondents Power One, Islands Grid, Tan, and Lauron. The complainants argued that, since the interests, rights, and obligations of respondents had already been transferred, respondents must be restrained from preventing them from performing their lawful and valid obligations under the ESA and the Revised MOA. Respondents opposed the Complaint and argued that the assignment of the ESA-ORMECO did not become

effective, since certain conditions under the Revised MOA had not yet been fulfilled. According to respondents, the Calapan Diesel Power Plant could not be commercially operated unless the conditions were satisfied; and until due consultation with ORMECO was held, and the latter's approval obtained.

The Pasig City Regional Trial Court (Pasig RTC) issued a 72-hour temporary restraining order (TRO) to Power One, Islands Grid, Tan, and Lauron. At the continuation of the hearing on the issuance of a preliminary injunction, the parties agreed to the policy of "no touch," in which none of the parties would enter the control and the engine rooms of the power plant. They also agreed to an interim compromise operation of the power plant. In the meantime, the branch sheriff of the Pasig RTC placed the operation of the power plant under the responsibility of Mid-Islands Power and MindoroTech.

However, on 20 October 2006 and during the pendency of the Complaint filed by MindoroTech and Mid-Islands Power, ORMECO filed a separate Complaint (Civil Case No. CV-06-5689) against Power One for specific performance of contract, with an application for preliminary mandatory injunction and damages before the RTC in Calapan City (Calapan RTC).[9] On the same day, the trial court issued a 72-hour TRO commanding Power One to perform and comply with the latter's obligation to immediately operate the Calapan Diesel Power Plant pursuant to the ESA-ORMECO. The Order also directed that, if Power One failed to perform its obligation, ORMECO would be authorized to operate the power plant. The sheriff of Calapan RTC eventually turned over to ORMECO the operations of the power plant and removed Mid-Islands and MindoroTech therefrom. According to the Calapan RTC judge, the TRO was issued to safeguard public interest, because there was an impending brownout in the whole province of Oriental Mindoro.[10]

On 6 November 2006, the Pasig RTC issued an Order[11] granting the prayer of MindoroTech and Mid-Islands Power for the issuance of a writ of preliminary injunction against Power One, Islands Grid, Tan, Lauron, and their representatives and agents. According to the RTC, actual and imminent danger was present. If the employees of complainants were prevented from operating the Calapan Diesel Power Plant, there would be undue interference with the performance of the ESA, which would in turn result in a power crisis in the area serviced by the Calapan Diesel Power Plant. The Pasig RTC noted that public interest was involved in the full and continuous supply of electricity in Oriental Mindoro. Thus, pursuant to the writ, Mid-Islands Power and MindoroTech were allowed to reenter and operate the Calapan Diesel Power Plant.

Thus, on the afternoon of 10 November 2006, the branch sheriff implemented the writ of preliminary injunction issued by the Pasig RTC, which allowed Mid-Islands Power and MindoroTech to resume their operations at the power plant. On that same day, however, the Calapan RTC issued a separate writ of preliminary mandatory injunction against these two corporations. Counsel for Power One then went to the power plant and demanded that Mid-Islands Power and MindoroTech vacate the premises. As both parties tried to enforce the two separate writs of preliminary injunction, which were issued by two different trial courts, trouble at the power plant ensued. Eventually, the Calapan RTC sheriff forcibly broke open the doors of the power plant and demanded that the personnel of both corporations leave the premises.

Consequently, respondents assailed the Order of the Pasig RTC before the CA (CA-G.R. SP No. 97243) through a Petition for Certiorari and Prohibition.[12] They argued that the trial court did not have territorial jurisdiction to issue the injunctive writ, because the acts sought to be enjoined had been committed in Calapan, Oriental Mindoro. On 10 December 2007, the CA issued a Decision[13] sustaining the Order of the Pasig RTC. According to the appellate court, the lockout indeed happened in Calapan, Oriental Mindoro; but since those who had barred the employees of Mid-Islands Power merely acted pursuant to the orders that officials of Power One issued from its principal office in Pasig City, the acts sought to be restrained had actually been committed within the territorial jurisdiction of the Pasig RTC. On 4 March 2008, the appellate court issued a Resolution denying the Motion for

Reconsideration of Power One and Islands Grid. Afterwards, on 20 April 2009, the CA issued another Resolution ordering the entry of judgment of its 10 December 2007 Decision and – as the judgment was no longer appealed to this Court – subsequently ruled that the said CA Decision had become final and executory on 2 April 2008.

Meanwhile, the Pasig RTC proceeded with the main action for injunction in Civil Case No. 70957-SJ. On 29 September 2008, it rendered summary judgment in favor of Mid-Islands Power and MindoroTech and made the preliminary injunction it issued on 6 November 2006 permanent.[14] Pursuant to the Order, Islands Grid and Power One were permanently enjoined from committing acts that would tend to prevent Mid-Islands Power and MindoroTech from exercising and performing the latter two's rights and obligations in operating the Calapan Diesel Power Plant.

On 9 December 2008, Power One filed a Motion for Extension of time to file its Petition for Certiorari with the CA and prayed for a 15-day extension. According to Power One, the Petition would question the 29 September 2008 Order of the Pasig RTC granting a permanent injunction against the former.[15] Power One claimed that on 10 October 2008, it received the Order that gave it until 9 December 2008 to file a petition for certiorari. However, it posited that the lawyer handling the case had left the firm, and that the other lawyers were not able to act upon the Petition due to "other equally important professional undertaking." [16] Pending the CA resolution on the Motion for Extension, Power One proceeded to file a Petition for Certiorari on 23 December 2008. The Motion for Extension (docketed as CA-G.R. SP No. 106511) was eventually granted on 23 December 2008.[17] Mid-Islands Power opposed the Resolution of the CA and argued that the Motion had been granted in violation of A.M. No. 07-7-12-SC. On 23 June 2009, the CA denied the Motion of Mid-Islands Power,[18] which consequently filed the instant Petition.

Issue

The sole issue presented before this Court is whether or not the CA committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in granting respondent Power One's Motion for Extension.

Discussion

According to petitioner, the CA committed grave abuse of discretion in granting Power One's Motion for Extension to file a petition for certiorari. Petitioner argues that the amendment under A.M. No. 07-7-12-SC had already deleted the provision that allows an extension of time to file a petition under Rule 65 of the Rules of Court.

Section 4, Rule 65 of the Rules of Court, was previously worded thus:

SEC. 4. When and where petition filed. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis supplied.)

In a Resolution dated 4 December 2007, the Supreme Court En Banc issued A.M. No. 07-7-12-SC, which amended the aforecited provision as follows:

Sec. 4. When and where to file the petition. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

In *Laguna Metts Corporation v. Court of Appeals*,^[19] we explained that the reason behind the amendments under A.M. No. 07-7-12-SC was to prevent the use or abuse of the remedy of petition for certiorari in order to delay a case or even defeat the ends of justice. We thus deleted the clause that allowed an extension of the period to file a Rule 65 petition for compelling reasons. Instead, we deemed the 60-day period to file as reasonable and sufficient time for a party to mull over the case and to prepare a petition that asserts grave abuse of discretion by a lower court. The period was specifically set and limited in order to avoid any unreasonable delay in the dispensation of justice, a delay that could violate the constitutional right of the parties to a speedy disposition of their case. Consequently, we pronounced that when the CA granted the motion for extension, it in effect disregarded and modified, if not outrightly reversed, the Supreme Court En Banc Resolution in A.M. No. 07-7-12-SC. We then said that in so doing, the appellate court arrogated unto itself “a power it did not possess, a power that only this Court may exercise.”^[20] Consequently, we ruled that petitions for certiorari must now be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration.^[21]

Nevertheless, in the more recent case of *Domdom v. Sandiganbayan*,^[22] we ruled that the deletion of the clause in Section 4, Rule 65 by A.M. No. 07-7-12-SC did not, ipso facto, make the filing of a motion for extension to file a Rule 65 petition absolutely prohibited. We held in *Domdom* that if absolute proscription were intended, the deleted portion could have just simply been reworded to specifically prohibit an extension of time to file such petition. Thus, because of the lack of an express prohibition, we held that motions for extension may be allowed, subject to this Court's sound discretion, and only under exceptional and meritorious cases.

Indeed, we have relaxed the procedural technicalities introduced under A.M. No. 07-7-12-SC in order to serve substantial justice and safeguard strong public interest. Thus, in *Tan v. Ballena*, we pronounced:

It is a well-settled principle that rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. In deciding a case, the appellate court has the discretion whether or not to dismiss the same, which discretion must be exercised soundly and in accordance with the tenets of justice and fair play, taking into account the circumstances of the case. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.^[23] (Citations omitted.)

The present Petition involves one of those exceptional cases in which relaxing the procedural rules would serve substantial justice and safeguard strong public interest. It concerns the operations and management of the Calapan Diesel Power Plant – a power-generating facility that supplies electricity to Oriental Mindoro. It was alleged that the dispute between the parties had already resulted in a reduced generation of power, which was supposedly producing electricity at less than 50% of its capacity. A TRO had already been issued previously, as there was an impending brownout in the entire province of Oriental Mindoro. Consequently, in order to protect strong public interest, this Court deems it appropriate and justifiable to relax the amendment of Section 4, Rule 65 under A.M. No. 07-7-12-SC, concerning the reglementary period for the filing of a Rule 65 petition. Considering that the imminent power crisis is an exceptional and meritorious circumstance, the parties herein should be allowed to litigate the issues on the merits. Furthermore, we find no significant prejudice to the substantive rights of the litigants as respondent was able to file the Petition before the CA within the 15-day extension it asked for. We therefore find no grave abuse of discretion attributable to the CA when it granted respondent Power One's Motion for Extension to file its Petition for Certiorari.

As a final note, we convey our strong disapproval over the failure of Power One's lawyers to file the Petition within the reglementary period. The amendments under A.M. No. 07-7-12-SC were meant to be implemented strictly, with a view in mind that the 60-day period to file is a reasonable and sufficient time to prepare a Rule 65 petition. Workload and resignation of the lawyer handling the case are insufficient reasons to justify the relaxation of the procedural rules. He should not have left his client with this very critical piece of work hanging in midair. Were it not for the exceptional nature of the case and the strong public interest involved herein, we would have overturned the approval by the CA of the Motion to extend the period to file a Rule 65 Petition.

WHEREFORE the Petition is DISMISSED. The 23 December 2008 and 23 June 2009 Resolutions of the Court of Appeals in CA-G.R. SP No. 106511 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[*] Petitioner alleges that respondents Islands Grid Network Philippines, Inc., David Tan, and Manuel Lauron were not named petitioners in the Petition for Certiorari filed by Power One with the CA; that the appellate court, with grave abuse of discretion, included them as petitioners in CA-G.R. SP No. 106511; and that petitioner included them as named respondents *ex abundanti ad cautelam*. Records show that, indeed, Power One was the sole petitioner that filed the Petition for Certiorari filed in CA-G.R. SP No. 106511.

[1] The 23 June 2009 Resolution in CA-G.R. SP No. 106511 was penned by CA Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jose L. Sabio, Jr. and Ricardo R. Rosario.

[2] Memorandum of Agreement, rollo, p. 158.

[3] Rollo, p. 174.

[4] The original party to the MOA was Viscal Development Corporation and not Container Corporation of the Philippines (CCP). There is nothing in the records that would explain the reason for the CCP's substitution of Viscal Development Corporation.

[5] Rollo, p. 176.

[6] Id. at 188-239.

[7] Id.

[8] Id. at 240.

[9] Investigation Report (Sapit v. Viray, A.M. No. P-07-2316, 7 December 2007) at 12, rollo, p. 692.

[10] Id. at 8, rollo, p. 688.

[11] Rollo, p. 331.

[12] Id. at 515.

[13] Id. at 568.

[14] Order of Pasig RTC at 14, rollo, p. 97.

[15] Motion for Extension of Time to File Petition for Certiorari under Rule 65, first page (unpaginated), rollo, p. 35.

[16] Id. at second page (unpaginated), rollo, p. 36.

[17] Rollo, p. 31.

[18] Id. at 33.

[19] G.R. No. 185220, 27 July 2009, 594 SCRA 139.

[20] Id. at 146.

[21] Id.

[22] G.R. No. 182382-83, 24 February 2010, 613 SCRA 528.

[23] G.R. No. 168111, 4 July 2008, 557 SCRA 229, 248.

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