

**NATIONAL IRRIGATION ADMINISTRATION, PETITIONER, VS.
HONORABLE TEODORO P. REGINO, PRESIDING JUDGE, REGIONAL
TRIAL COURT, BRANCH 84, QUEZON CITY AND CONSTRUCTION
SERVICES OF AUSTR...**

G.R. No. 86586. December 04, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari with preliminary injunction and/or restraining order seeking the annulment of (1) the October 5, 1988 Order granting the motion for issuance of writ of execution; (2) the Writ of Execution dated October 21, 1988 and (3) the January 18, 1989 Order denying the urgent motion to quash order of execution and to lift notice of garnishment, all issued by the Regional Trial Court of Quezon City, Branch 84, presided over by herein respondent Judge Teodoro P. Regino, in Civil Case No. Q-52618.

On August 10, 1982, the private parties of this case, herein petitioner National Irrigation Administration (NIA) and respondent Construction Services of Australia-Philippines, Inc. (CONSAPHIL) entered into a contract whereby NIA engaged the services of the latter for the subdivision and development of six parcels of land owned by NIA and the construction of housing units for the said parcels.

On April 2, 1984, NIA and CONSAPHIL executed another contract, denominated as Supplemental Contract No. 1, due to the order of NIA for additional housing units and completion of the site development of Area B; NIA's approval of change and extra work orders; and CONSAPHIL's request to NIA for adjustment of the contract price in order for it to continue the effective execution of the contract.

On June 24, 1985, the NIA Board, in its 455th Regular Meeting, adopted Resolution No. 5168-85, which reads:

"RESOLVED, as it is hereby resolved, that the request of CONSAPHIL for the balance of their claim over and above the P2,706,627.44 already awarded by NIA for price escalation is hereby denied, and that it be referred to the Ministry of Public Works and Highways for final study and decision." (p. 500, Rollo)

Pursuant to this resolution, on July 24, 1985, the then Administrator of NIA, Mr. Cesar L. Tech, entered into a compromise agreement with CONSAPHIL that "CONSAPHIL may pursue approval of its claim over and above the P2,706,627.44 with the Ministry of Public Works and Highways" whose decision shall be final and binding upon them. (p. 500, Rollo)

The Secretary of Public Works and Highways, in a Resolution dated November 20, 1987, granted CONSAPHIL's claim for price escalation.

To the aforesaid resolution, NIA filed a Motion for Reconsideration on February 1, 1988, on the grounds that (1) the resolution was based on a misapprehension of facts; and (2) P.D. No. 1594 and its implementing rules do not apply to the housing project of NIA. The same, however, was denied in an Order dated April 14, 1988.

Meanwhile, CONSAPHIL filed with the Regional Trial Court of Quezon City on January 5, 1988 a Petition for Confirmation of Arbitration Award under Republic Act 876, docketed therein as Civil Case No. 52618 (Rollo, pp. 20-21); to which NIA filed its Answer dated March 21, 1988 (Ibid., pp. 22-30).

On May 26, 1988, a pre-trial conference was held. Solicitor Amparo Cabotaje and Atty. Samuel Basuil appeared for NIA, and Attys. Antonio G. Conde and Petronillo David appeared for CONSAPHIL. The respective counsel submitted their respective powers of attorney from their clients. Respondent judge, at the instance of CONSAPHIL, granted the latter a period of ten (10) days within which to file a motion to confirm arbitration award or decision; and on June 7, 1988, CONSAPHIL filed its said motion (Ibid., pp. 31-46).

On June 17, 1988, NIA filed a Manifestation with Motion that it is adopting the grounds adduced in the special and affirmative defenses of its Answer dated March 21, 1988 as its opposition to CONSAPHIL's motion to confirm arbitration award, and that it be granted a period of thirty (30) days to file an appropriate motion to vacate the arbitration award of the Secretary of Public Works and Highways (Ibid., p. 47).

Respondent judge, in an Order dated July 5, 1988 (Ibid., pp. 48-55), confirmed the arbitration award –

"WHEREFORE, and in view of the facts contained in the record and in accordance with Republic Act No. 876, this Court is of the opinion, and so holds, that the arbitration award for Resolution dated November 20, 1987, of the Secretary of Public Works and Highways must be, as is hereby, confirmed".

On July 25, 1988, NIA moved for the reconsideration of the said order (Ibid., pp. 56-60), but the same was denied in an Order dated August 2, 1988 (Ibid., pp. 61-62).

On August 18, 1988, the Office of the Solicitor General (CSG) filed with the Court of Appeals a Motion for Extension of Time to File Petition for Review, docketed therein as CA G.R. No. SP-15381 (Ibid., pp. 63-66). This was opposed by CONSAPHIL (Ibid., pp. 67-75), but the same was granted by the Court of Appeals.

On September 6, 1988, CONSAPHIL filed a Supplemental to Opposition to Motion for Extension to File Petition/Motion to Dismiss (Ibid., pp 77-83); and the Court of Appeals, in a Resolution of the same date, required NIA to comment (Ibid., p. 76). In compliance, NIA filed its Comment on September 22, 1988 (Ibid., pp. 84-93); and thereafter, filed its Petition for Certiorari dated September 28, 1988 (Ibid., pp. 333-354).

Meanwhile, on August 23, 1988, CONSAPHIL filed with the lower court a Motion for Execution Pending Appeal (Ibid., pp. 94-97), opposed by NIA (Ibid., pp. 98-101), and respondent judge, in an Order dated September 5, 1988, denied the motion on the ground that such order of execution would be to render moot and academic any appeal (Ibid., p. 102).

CONSAPHIL, prior to the denial of its above said motion, or on August 31, 1988, filed with the lower court a Motion for Execution, claiming therein that the July 5, 1988 order of the Court is already final and executory (Ibid., pp. 103-106). The same was opposed by NIA, but respondent judge, in an Order dated October 5, 1988, granted the motion -

"WHEREFORE, this Court holds that in view of the facts contained in the record, the motion for execution must be granted and, accordingly, let the corresponding writ of execution issue in this case."

On October 10, 1988, NIA filed with the Court of Appeals a Most Urgent Motion for Issuance of Temporary Restraining Order (Ibid., pp. 102-122).

On October 21, 1988, respondent judge issued a writ of execution (Ibid., pp. 123-124).

On November 11, 1988, the Court of Appeals issued a temporary restraining order enjoining respondent judge

from enforcing his order of October 5, 1988 (Ibid., p. 132).

On November 16, 1988, NIA filed in the lower court an Urgent Motion to Quash Order of Execution and to Lift Notice of Garnishment (Ibid., pp. 125-130). This was opposed by CONSAPHIL (Ibid., pp. 133-144).

On December 5, 1988, CONSAPHIL filed a Manifestation and Motion for Resolution of Pending Motions, claiming that the lifespan of the temporary restraining order issued by the Court of Appeals against the implementation of the October 5, 1988 order had already expired.

Respondent judge, in an Order dated January 18, 1989 (Ibid., pp. 145-146), denied NIA's motion to quash order of execution and to lift notice of garnishment -

“WHEREFORE, the Court grants the Motion of petitioner but denies respondent’s motion to quash order of execution and to lift notice of garnishment. Accordingly, the Manager of the Philippine National Bank branch at NIA building, EDSA, is hereby directed to release and turn over the garnished money of respondent NIA to the extent of P8,647,272.52 within five (5) days from receipt of this Order.”

The Court of Appeals, in a Resolution dated March 9, 1989, gave due course to NIA's petition and required the parties to file their respective memoranda. CONSAPHIL filed its Memorandum, while NIA filed a manifestation that its petition be considered as its memorandum.

The Court of Appeals, in a Decision promulgated on May 8, 1989 (Ibid., pp. 357-376), set aside the questioned orders of respondent judge and entered a new one denying CONSAPHIL's motion to confirm the arbitration award.

Meanwhile, on January 30, 1989, NIA had filed with this Court the instant petition. The Court En Banc, in a Resolution dated February 7, 1989, resolved to issue a temporary restraining order (Ibid., p. 153); and after the parties have filed the required pleadings, in a Resolution dated September 14, 1989, resolved to give due course to the petition and to require the parties to file simultaneously their respective memoranda (Ibid., p. 450), CONSAPHIL filed its Memorandum on December 16, 1989 (Ibid., pp. 460-484), while NIA filed its Memorandum on January 12, 1990 (Ibid., pp. 485-499).

The sole issue raised by petitioner is -

WHETHER OR NOT RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN HOLDING THAT ITS ORDER OF JULY 5, 1988 HAD BECOME FINAL AND EXECUTORY.

The instant petition is devoid of merit.

Petitioner claims that the record of this case discloses that its main counsel is the OSG; that its request for legal representation to the OSG is with the advise that "(A) special attorney of this Agency shall collaborate/assist your Office in the defense of the case"; and that Atty. Simeon Basuil is only a special attorney, not authorized to decide on his own what action to be taken on any incident regarding the case, but must refer the incident to the OSG for final decision. Likewise, petitioner claims that the record discloses that OSG received a copy of the July 5, 1988 Order of respondent Judge on July 14, 1988; that it filed a Motion for Reconsideration of the said order on July 26, 1988; that on August 4, 1988, Atty. Basuil received a copy of respondent judge’s order of August 2, 1988 denying the motion for reconsideration; that the said order was transmitted to OSG only on August 16, 1988; and that on August 18, 1988, OSG filed with the Court of Appeals a Motion for Extension of Time to File Petition for Review. With the above as its premise, petitioner contends that respondent judge erred in holding that the receipt of the said order of August 2, 1988 on August 4, 1988 by Atty. Basuil constitute legal service to petitioner and that the period to appeal started to run on the said date, August 4, 1988, and not on August 16, 1988, the date the

OSG learned of the said order. It argues that Atty. Basuil receipt of the said August 2, 1988 order of respondent judge could not have amounted to a valid legal service upon OSG as a counsel of record. That the rule is settled that where a party is represented by counsel, the period of appeal starts running from receipt by counsel of the decision, not from the party's receipt thereof. That its motion for extension of time was filed on the fourteenth day of the 15-day reglementary period. Petitioner, likewise, contends that respondent judge had unduly shortened the period of OSG in taking whatever steps might be necessary to protect its client's (petitioner's) interest.

Petitioner's contentions are untenable.

The Special Power of Attorney executed by petitioner in favor of the Solicitor General and Atty. Basuil, which was presented to the lower court, clearly provides that petitioner "appoints and constitutes the SOLICITOR GENERAL, or any member of his legal staff and/or ATTY. SIMEON S. BASUIL, to be its true and lawful attorneys-in-fact" to appear for and in its behalf in the pre-trial and subsequent hearings of the case. The same did not only give notice that the Solicitor General and Atty. Basuil are the counsel of record of petitioner, but likewise gave notice that either of them, with equal force, can represent and appear for petitioner and bind it. In addition, it must be stated that, under Section 2, Rule 13 of the Rules of Court, when a party is represented by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them unless service upon the party himself is ordered by the court. Besides, as aptly argued by private respondent, the Solicitor General did not appoint Atty. Basuil a special attorney or his deputy; that neither did the Solicitor General clarify the position of Atty. Basuil when he received copies of the orders of respondent judge, referring to him as partner-counsel of Solicitor Amparo Cabotaje; and that circumstantial evidence clearly shows that there was a close working relationship between the Solicitor General and Attorney Basuil. Although the Motion for Reconsideration of the July 5, 1988 order was prepared and filed by the Solicitor General for petitioner, Atty. Basuil was fast in his heels in getting notices of respondent judge (Orders of July 5, 1988 and August 2, 1988) in advance. Atty. Basuil appeared in the hearing of the Motion for Execution of Judgment Pending Appeal filed by private respondent without the presence of Solicitor Cabotaje. Attorney Basuil in fact attended all the hearings held by respondent judge in the case.

Moreover, in petitioner's Motion for Extension of Time to File Petition for Review (*Ibid.*, pp. 63-66) prepared by the OSG, Paragraph 2 thereof stated that the August 2, 1988 Order of respondent judge was received by the OSG on August 5, 1988. In this connection, it must be stated that admissions made by the parties in their pleadings, or in the course of trial or other proceedings do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake (Sec. 2, Rule 129, Rules of Court; *Sta. Ana vs. Maliwat*, 24 SCRA 1018, 1022-1023 [1968]). True, the Solicitor General claims that the same is a typographical error, but as aptly argued by private respondent, it is highly improbable that the Solicitor General, who prepared and filed the said motion, committed a typographical error in alleging that he received a copy of the Order of August 2, 1988 on August 5, 1988. The Solicitor General's allegation coincides closely with the receipt by Atty. Basuil of the said Order of August 2, 1988 on August 4, 1988. The alleged receipt by the Solicitor General of the letter of petitioner enclosing a copy of the Order of August 2, 1988 on August 16, 1988 was still fresh in his mind when he prepared the said motion which he had filed on August 18, 1988 that it is hard to believe that he erred in stating that he had received a copy of the said order on August 5, 1988.

Furthermore, even granting that Atty. Basuil is only a special attorney, his receipt of the said Order of August 2, 1988 is binding both on the OSG and on petitioner. This Court, in the case of *Republic vs. Soriano* (168 SCRA 560, 567 [1988]), ruled -

"The petitioner's contention that service of the questioned Orders to a deputized special attorney of the OSG would not bind the OSG so that the Orders did not attain their finality when the Motion was filed, does not

have a leg to stand on. It is a well-settled principle that the acts of the authorized Deputy bind the principal counsel. Thus service on the Deputy is service on the OSG.

"Moreover, the records will disclose that Atty. Fidel Evangelista, who is a deputized attorney was the one who appeared for the petitioner in the lower court. It is not only lawful but also in accordance with the normal and standard practice that notices be sent to said special Attorney to avoid delays and complications. Precisely, the OSG has no time and manpower to handle all the cases of multifarious government agencies such that deputization is authorized by law to cope with such contingencies."

PREMISES CONSIDERED, the instant petition is hereby DISMISSED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Feliciano, J., on leave.

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