

CHUNG FU INDUSTRIES (PHILIPPINES) INC., ITS DIRECTORS AND OFFICERS NAMELY: HUANG KUO-CHANG, HUANG AN-CHUNG, JAMES J.R. CHEN, TRISTAN A. CATINDIG, VICENTE B. AMADOR, ROCK A.C. HU...*G.R. No. 96283. February 25, 1992*

Ponente: ROMERO, J.

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This is a special civil action for certiorari seeking to annul the Resolutions of the Court of Appeals* dated October 22, 1990 and December 3, 1990 upholding the Orders of July 31, 1990 and August 23, 1990 of the Regional Trial Court of Makati, Branch 57, in Civil Case No. 90-1335. Respondent Court of Appeals affirmed the ruling of the trial court that herein petitioners, after submitting themselves for arbitration and agreeing to the terms and conditions thereof, providing that the arbitration award shall be final and unappealable, are precluded from seeking judicial review of subject arbitration award.

It appears that on May 17, 1989, petitioner Chung Fu Industries (Philippines) (Chung Fu for brevity) and private respondent Roblecor Philippines, Inc. (Roblecor for short) forged a construction agreement[1] whereby respondent contractor committed to construct and finish on December 31, 1989, petitioner corporation's industrial/factory complex in Tanawan, Tanza, Cavite for and in consideration of P42,000,000.00. In the event of disputes arising from the performance of subject contract, it was stipulated therein that the issue(s) shall be submitted for resolution before a single arbitrator chosen by both parties.

Apart from the aforesaid construction agreement, Chung Fu and Roblecor entered into two (2) other ancillary contracts, to wit: one dated June 23, 1989, for the construction of a dormitory and support facilities with a contract price of P3,875,285.00, to be completed on or before October 31, 1989;[2] and the other dated August 12, 1989, for the installation of electrical, water and hydrant systems at the plant site, commanding a price of P12.1 million and requiring completion thereof one month after civil works have been finished.[3]

However, respondent Roblecor failed to complete the work despite the extension of time allowed it by Chung Fu. Subsequently, the latter had to take over the construction when it had become evident that Roblecor was not in a position to fulfill its obligation.

Claiming an unsatisfied account of P10,500,000.00 and unpaid progress billings of P2,370,179.23, Roblecor on May 18, 1990, filed a petition for Compulsory Arbitration with prayer for Temporary Restraining Order before respondent Regional Trial Court, pursuant to the arbitration clause in the construction agreement. Chung Fu moved to dismiss the petition and further prayed for the quashing of the restraining order.

Subsequent negotiations between the parties eventually led to the formulation of an arbitration agreement which, among others, provides:

"2. The parties mutually agree that the arbitration shall proceed in accordance with the following terms and

conditions: ---

‘x x x x x x x x

‘d. The parties mutually agree that they will abide by the decision of the arbitrator including any amount that may be awarded to either party as compensation, consequential damage and/or interest thereon;

‘e. The parties mutually agree that the decision of the arbitrator shall be final and unappealable. Therefore, there shall be no further judicial recourse if either party disagrees with the whole or any part of the arbitrator's award

‘f. As an exception to sub-paragraph (e), above, the parties mutually agree that either party is entitled to seek judicial assistance for purposes of enforcing the arbitrator's award;

x x x x x x x x.”[4]

(Underscoring supplied)

Respondent Regional Trial Court approved the arbitration agreement thru its Order of May 30, 1990. Thereafter, Engr. Willardo Asuncion was appointed as the sole arbitrator.

On June 30, 1990, Arbitrator Asuncion ordered petitioners to immediately pay respondent contractor, the sum of P16,108,801.00. He further declared the award as final and unappealable, pursuant to the Arbitration Agreement precluding judicial review of the award.

Consequently, Roblecor moved for the confirmation of said award. On the other hand, Chung Fu moved to remand the case for further hearing and asked for a reconsideration of the judgment award claiming that Arbitrator Asuncion committed twelve (12) instances of grave error by disregarding the provisions of the parties' contract.

Respondent lower court denied Chung Fu's Motion to Remand thus compelling it to seek reconsideration therefrom but to no avail. The trial court granted Roblecor's Motion for Confirmation of Award and accordingly, entered judgment in conformity therewith. Moreover, it granted the motion for the issuance of a writ of execution filed by respondent.

Chung Fu elevated the case via a petition for certiorari to respondent Court of Appeals. On October 22, 1990 the assailed resolution was issued. The respondent appellate court concurred with the findings and conclusions of respondent trial court resolving that Chung Fu and its officers, as signatories to the Arbitration Agreement are bound to observe the stipulations thereof providing for the finality of the award and precluding any appeal therefrom.

A motion for reconsideration of said resolution was filed by petitioner, but it was similarly denied by respondent Court of Appeals thru its questioned resolution of December 3, 1990.

Hence, the instant petition anchored on the following grounds:

First

Respondents Court of Appeals and trial Judge gravely abused their discretion and/or exceeded their jurisdiction, as well as denied due process and substantial justice to petitioners, -- (a) by refusing to exercise their judicial authority and legal duty to review the arbitration award, and (b) by declaring that petitioners are estopped from questioning the arbitration award allegedly in view of the stipulations in the parties' arbitration agreement that "the decision of the arbitrator shall be final and unappealable" and that "there shall be no further judicial recourse if either party disagrees with the whole or any part of the arbitrator's award."

Second

Respondent Court of Appeals and trial Judge gravely abused their discretion and/or exceeded their jurisdiction, as well as denied due process and substantial justice to petitioner, by not vacating and annulling the award dated 30 June 1990 of the Arbitrator, on the ground that the Arbitrator grossly departed from the terms of the parties' contracts and misapplied the law, and thereby exceeded the authority and power delegated to him. (Rollo, p. 17)

Allow us to take a leaf from history and briefly trace the evolution of arbitration as a mode of dispute settlement.

Because conflict is inherent in human society, much effort has been expended by men and institutions in devising ways of resolving the same. With the progress of civilization, physical combat has been ruled out and instead, more pacific means have been evolved, such as recourse to the good offices of a disinterested third party, whether this be a court or a private individual or individuals.

Legal history discloses that "the early judges called upon to solve private conflicts were primarily the arbiters, persons not specially trained but in whose morality, probity and good sense the parties in conflict reposed full trust. Thus, in Republican Rome, arbiter and judge (judex) were synonymous. The magistrate or praetor, after noting down the conflicting claims of litigants, and clarifying the issues, referred them for decision to a private person designated by the parties, by common agreement, or selected by them from an apposite listing (the album judicium) or else by having the arbiter chosen by lot. The judges proper, as specially trained state officials endowed with own power and jurisdiction, and taking cognizance of litigations from beginning to end, only appeared under the Empire, by the so-called *cognitio extra ordinem*." [5]

Such means of referring a dispute to a third party has also long been an accepted alternative to litigation at common law. [6]

Sparse though the law and jurisprudence may be on the subject of arbitration in the Philippines, it was nonetheless recognized in the Spanish Civil Code; specifically, the provisions on compromises made applicable to arbitrations under Articles 1820 and 1821. [7] Although said provisions were repealed by implication with the repeal of the Spanish Law of Civil Procedure, [8] these and additional ones were reinstated in the present Civil Code. [9]

Arbitration found a fertile field in the resolution of labor-management disputes in the Philippines. Although early on, Commonwealth Act 103 (1936) provided for compulsory arbitration as the state policy to be administered by the Court of Industrial Relations, in time such a modality gave way to voluntary arbitration. While not completely supplanting compulsory arbitration which until today is practiced by government officials, the Industrial Peace Act which was passed in 1953 as Republic Act No. 875, favored the policy of free collective bargaining, in general, and resort to grievance procedure, in particular, as the preferred mode of settling disputes in industry. It was accepted and enunciated more explicitly in the Labor Code, which was passed on November 1, 1974 as Presidential Decree No. 442, with the amendments later introduced by Republic Act No. 6715 (1989).

Whether utilized in business transactions or in employer-employee relations, arbitration was gaining wide acceptance. A consensual process, it was preferred to orders imposed by government upon the disputants. Moreover, court litigations tended to be time consuming, costly, and inflexible due to their scrupulous observance of the due process of law doctrine and their strict adherence to rules of evidence.

As early as the 1920's, this Court declared:

"In the Philippines fortunately, the attitude of the courts toward arbitration agreements is slowly crystallizing into definite and workable form. . . The rule now is that unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon

such amicable arrangements and will only with great reluctance interfere to anticipate or nullify the action of the arbitrator." [10]

That there was a growing need for a law regulating arbitration in general was acknowledged when Republic Act No. 876 (1953), otherwise known as the Arbitration Law, was passed. "Said Act was obviously adopted to supplement -- not to supplant -- the New Civil Code on arbitration. It expressly declares that 'the provisions of chapters one and two, Title XIV, Book IV of the Civil Code shall remain in force.'" [11]

In recognition of the pressing need for an arbitral machinery for the early and expeditious settlement of disputes in the construction industry, a Construction Industry Arbitration Commission (CIAC) was created by Executive Order No. 1008, enacted on February 4, 1985.

In practice nowadays, absent an agreement of the parties to resolve their disputes via a particular mode, it is the regular courts that remain the fora to resolve such matters. However, the parties may opt for recourse to third parties, exercising their basic freedom to "establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy." [12] In such a case, resort to the arbitration process may be spelled out by them in a contract in anticipation of disputes that may arise between them. Or this may be stipulated in a submission agreement when they are actually confronted by a dispute. Whatever be the case, such recourse to an extrajudicial means of settlement is not intended to completely deprive the courts of jurisdiction. In fact, the early cases on arbitration carefully spelled out the prevailing doctrine at the time, thus: ". . . a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitrators and to them alone is contrary to public policy and cannot oust the courts of jurisdiction." [13]

But certainly, the stipulation to refer all future disputes to an arbitrator or to submit an ongoing dispute to one is valid. Being part of a contract between the parties, it is binding and enforceable in court in case one of them neglects, fails or refuses to arbitrate. Going a step further, in the event that they declare their intention to refer their differences to arbitration first before taking court action, this constitutes a condition precedent, such that where a suit has been instituted prematurely, the court shall suspend the same and the parties shall be directed forthwith to proceed to arbitration. [14]

A court action may likewise be proper where the arbitrator has not been selected by the parties. [15]

Under present law, may the parties who agree to submit their disputes to arbitration further provide that the arbitrators' award shall be final, unappealable and executory?

Article 2044 of the Civil Code recognizes the validity of such stipulation, thus:

"Any stipulation that the arbitrators' award or decision shall be final is valid, without prejudice to Articles 2038, 2039 and 2040."

Similarly, the Construction Industry Arbitration Law provides that the arbitral award "shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court." [16]

Under the original Labor Code, voluntary arbitration awards or decisions were final, unappealable and executory. "However, voluntary arbitration awards or decisions on money claims, involving an amount exceeding One Hundred Thousand Pesos (P100,000.00) or forty-percent (40%) of the paid-up capital of the respondent employer, whichever is lower, may be appealed to the National Labor Relations Commission on any of the following grounds: (a) abuse of discretion; and (b) gross incompetence." [17] It is to be noted that the appeal in the instances cited were to be made to the National Labor Relations Commission and not to the courts.

With the subsequent deletion of the above-cited provision from the Labor Code, the voluntary arbitrator is now mandated to render an award or decision within twenty (20) calendar days from the date of submission of the dispute and such decision shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.[18]

Where the parties agree that the decision of the arbitrator shall be final and unappealable as in the instant case, the pivotal inquiry is whether subject arbitration award is indeed beyond the ambit of the court's power of judicial review.

We rule in the negative. It is stated explicitly under Art. 2044 of the Civil Code that the finality of the arbitrators' award is not absolute and without exceptions. Where the conditions described in Articles 2038, 2039 and 2040 applicable to both compromises and arbitrations are obtaining, the arbitrators' award may be annulled or rescinded.[19] Additionally, under Sections 24 and 25 of the Arbitration Law, there are grounds for vacating, modifying or rescinding an arbitrator's award.[20] Thus, if and when the factual circumstances referred to in the above-cited provisions are present, judicial review of the award is properly warranted.

What if courts refuse or neglect to inquire into the factual milieu of an arbitrator's award to determine whether it is in accordance with law or within the scope of his authority? How may the power of judicial review be invoked?

This is where the proper remedy is certiorari under Rule 65 of the Revised Rules of Court. It is to be borne in mind, however, that this action will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction on the part of the voluntary arbitrator is clearly shown. For "the writ of certiorari is an extra-ordinary remedy and that certiorari jurisdiction is not to be equated with appellate jurisdiction. In a special civil action of certiorari, the Court will not engage in a review of the facts found nor even of the law as interpreted or applied by the arbitrator unless the supposed errors of fact or of law are so patent and gross and prejudicial as to amount to a grave abuse of discretion or an *exces de pouvoir* on the part of the arbitrator." [21]

Even decisions of administrative agencies which are declared "final" by law are not exempt from judicial review when so warranted. Thus, in the case of *Oceanic Bic Division (FFW) et al. v. Florida Ruth P. Romero, et al.*, [22] this Court had occasion to rule that:

"x x x In spite of statutory provisions making 'final' the decisions of certain administrative agencies, we have taken cognizance of petitions questioning these decisions where want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law were brought to our attention x x x." [23] (Under-scoring ours.)

It should be stressed too, that voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity.[24] It stands to reason, therefore, that their decisions should not be beyond the scope of the power of judicial review of this Court.

In the case at bar, petitioners assailed the arbitral award on the following grounds, most of which allege error on the part of the arbitrator in granting compensation for various items which apparently are disputed by said petitioners:

1. The Honorable Arbitrator committed grave error in failing to apply the terms and conditions of the Construction Agreement, Dormitory Contract and Electrical Contract, and in using instead the "practices" in the construction industry;
2. The Honorable Arbitrator committed grave error in granting extra compensation to Roblecor for loss of productivity due to adverse weather conditions;
3. The Honorable Arbitrator committed grave error in granting extra compensation to Roblecor for loss due to

delayed payment of progress billings;

4. The Honorable Arbitrator committed grave error in granting extra compensation to Roblecor for loss of productivity due to the cement crisis;

5. The Honorable Arbitrator committed grave error in granting extra compensation to Roblecor for losses allegedly sustained on account of the failed coup d'etat;

6. The Honorable Arbitrator committed grave error in granting to Roblecor the amount representing the alleged unpaid billings of Chung Fu;

7. The Honorable Arbitrator committed grave error in granting to Roblecor the amount representing the alleged extended overhead expenses;

8. The Honorable Arbitrator committed grave error in granting to Roblecor the amount representing expenses for change order for site development outside the area of responsibility of Roblecor;

9. The Honorable Arbitrator committed grave error in granting to Roblecor the cost of warehouse No. 2;

10. The Honorable Arbitrator committed grave error in granting to Roblecor extra compensation for airduct change in dimension;

11. The Honorable Arbitrator committed grave error in granting to Roblecor extra compensation for airduct plastering; and

12. The Honorable Arbitrator committed grave error in awarding to Roblecor attorney's fees.

After closely studying the list of errors, as well as petitioners' discussion of the same in their Motion to Remand Case For Further Hearing and Reconsideration and Opposition to Motion for Confirmation of Award, we find that petitioners have amply made out a case where the voluntary arbitrator failed to apply the terms and provisions of the Construction Agreement which forms part of the law applicable as between the parties, thus committing a grave abuse of discretion. Furthermore, in granting unjustified extra compensation to respondent for several items, he exceeded his powers -- all of which would have constituted ground for vacating the award under Section 24 (d) of the Arbitration Law.

But the respondent trial court's refusal to look into the merits of the case, despite prima facie showing of the existence of grounds warranting judicial review, effectively deprived petitioners of their opportunity to prove or substantiate their allegations. In so doing, the trial court itself committed grave abuse of discretion. Likewise, the appellate court, in not giving due course to the petition, committed grave abuse of discretion. Respondent courts should not shirk from exercising their power to review, where under the applicable laws and jurisprudence, such power may be rightfully exercised; more so where the objections raised against an arbitration award may properly constitute grounds for annulling, vacating or modifying said award under the laws on arbitration.

WHEREFORE, the petition is GRANTED. The Resolutions of the Court of Appeals dated October 22, 1990 and December 3, 1990 as well as the Orders of respondent Regional Trial Court dated July 31, 1990 and August 23, 1990, including the writ of execution issued pursuant thereto, are hereby SET ASIDE. Accordingly, this case is REMANDED to the court of origin for further hearing on this matter. All incidents arising therefrom are reverted to the status quo ante until such time as the trial court shall have passed upon the merits of this case. No costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

* Justice Jose C. Campos, Jr., ponente, with Justices Oscar M. Herrera and Abelardo M. Dayrit concurring.

[1] Annex "K" to the petition, Rollo, pp. 146-155.

[2] Annex "L;" Rollo pp. 156-161.

[3] Annex "M;" Rollo pp. 162-166.

[4] Annex "O;" Rollo pp. 172-175.

[5] Reyes, J.B.L., Voluntary Arbitration (Proceedings of the Second Conference on Voluntary Arbitration - 1980), p. 6.

[6] Under Chan Linte v. Law Union and Rock Insurance Co., etc., G.R. No. 16398, 14 December 1921, 42 Phil. 548, citing C.J. vol. 5, p. 16,

"[t]he settlement of controversies by arbitration is an ancient practice at common law. In its broad sense it is a substitution, by consent of parties, of another tribunal for the tribunals provided by the ordinary processes of law; x x x. Its object is the final disposition, in a speedy and inexpensive way, of the matters involved, so that they may not become the subject of future litigation between the parties."

[7] "Article 1820. Persons capable of making a compromise may also submit their contentions to a third person for decision.

Article 1821. The provisions of the next preceding chapter with respect to compromises shall also be applicable to arbitrations.

With regard to the form of procedure in arbitration and to the extent and effects thereof, the provisions of the Law of Civil Procedure shall be observed."

[8] Cordoba v. Conde, 2 Phil. 445 (1903).

[9] Articles 2042-2046, Republic Act No. 386 which was passed on June 18, 1949.

[10] Malcolm, J. dissenting, in Vega v. San Carlos Milling Co., 51 Phil. 908 (1924); Manila Electric Co. v. Pasay Transportation Co., 57 Phil. 600 (1932).

[11] Umbao v. Yap, 100 Phil. 1008 (1957).

[12] Civil Code, Article 1306.

[13] Wahl, et al. v. Donaldson, Sims and Co., 2 Phil. 301 (1903); Puentebella v. Negros Coal Co., 50 Phil. 69 (1927); Cordoba v. Conde, 2 Phil. 445 (1903); and Labayen v. Hernaez, 1 Phil. 587 (1902).

[14] Bengson v. Chan, No. L-27283, July 29, 1977, 78 SCRA 113.

[15] Supra, footnote 11.

[16] Executive Order No. 1008, Section 19.

[17] Labor Code, Article 262.

[18] Labor Code, Article 262-A.

[19] "Article 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code.

However, one of the parties cannot set up a mistake of fact as against the other if the latter, by virtue of the compromise, has withdrawn from a litigation already commenced."

"Article 2039. When the parties compromise generally on all differences which they might have with each other, the discovery of documents referring to one or more but not to all of the questions settled shall not itself be a cause for annulment or rescission of the compromise, unless said documents have been concealed by one of the parties.

But the compromise may be annulled or rescinded if it refers only to one thing to which one of the parties has no right, as shown by the newly-discovered documents."

"Article 2040. If after a litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being unaware of the existence of the final judgment, the compromise may be rescinded.

Ignorance of a judgment which may be revoked or set aside is not a valid ground for attacking a compromise."

[20] Section 24. Grounds for vacating award. - In any one of the following cases, the court must make an order vacating the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

- (a) The award was procured by corruption, fraud, or other undue means; or
- (b) That there was evident partiality or corruption in the arbitrators or any of them; or
- (c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and wilfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or
- (d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Where an award is vacated, the court, in its discretion, may direct a new hearing either before the same arbitrators or before a new arbitrator or arbitrators chosen in the manner provided in the submission or contract for the selection of the original arbitrator or arbitrators, and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

Where the court vacates an award, costs, not exceeding fifty pesos and disbursements may be awarded to the prevailing party and the payment thereof may be enforced in like manner as the payment of costs upon the motion in an action."

Section 25. Grounds for modifying or correcting award.

In any one of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the controversy which was arbitrated:

- (a) Where there was an evident miscal-culation of figures, or an evident mistake in the description of any person, thing or property referred to in the award; or

(b) Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or

(c) Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.

The order may modify and correct the award so as to effect the intent thereof and promote justice between the parties."

[21] *Sime Darby Pilipinas, Inc. v. Magsalin*, G.R. No. 90426, December 15, 1989, 180 SCRA 177.

[22] G.R. No. L-43890, July 16, 1984, 130 SCRA 392.

[23] 130 SCRA at 399.

[24] *Ibid*; *Mantrade/FMMC Division Employees and Workers Union v. Bacungan*, No. L-48437, September 30, 1986, 144 SCRA 510.

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