

## SECOND DIVISION

[ G.R. No. 230645, July 01, 2019 ]

**TONDO MEDICAL CENTER, REPRESENTED BY DR. MARIA ISABELITA M. ESTRELLA, PETITIONER, VS. ROLANDO RANTE, DOING BUSINESS UNDER THE NAME AND STYLE OF JADEROCK BUILDERS, RESPONDENT.**

### DECISION

**REYES, J. JR., J.:**

This resolves the Petition for Review on *Certiorari* filed pursuant to Rule 45 of the 1997 Rules of Court which seeks to nullify and set aside the October 20, 2016 Decision<sup>[1]</sup> and the March 16, 2017 Resolution<sup>[2]</sup> of the Court of Appeals (CA), affirming the June 20, 2016 Final Award of the Construction Industry Arbitration Commission (CIAC) denying petitioner's Motion for Reconsideration, in CA-GR. SP No. 146476.

On August 27, 2013, petitioner Tondo Medical Center (TMC), through its then Medical Center Chief II, Dr. Victor J. Dela Cruz, entered into a Contract Agreement<sup>[3]</sup> with Jaderock Builders, represented by Rolando Rante (respondent), for the construction project (project) involving the renovation of its OB-Gyne wards, elevation of linen building, elevation of hospital ground, elevation of dormitory and improvement of perimeter fence. The project was funded by the Department of Health (DOH) under the Health Facilities Enhancement Program.<sup>[4]</sup>

The contract provides that the construction should be completed within 240 days from September 4, 2013, with a proposed contract price of P11,799,602.83.<sup>[5]</sup> To secure the performance of the project, respondent posted a performance bond in the amount of P1,180,000.00.

TMC claims that respondent incurred delays in the project. This prompted the newly appointed officer-in-charge Dr. Cristina V. Acuesta (Dr. Acuesta) to write respondent a letter informing the latter of the delays and directed him to deploy sufficient work force to cover the delays incurred.

TMC requested respondent to prioritize the OB-Gyne ward. Respondent acceded and allegedly promised Dr. Acuesta that he will finish the OB-Gyne ward by December 2013. However, in December 2013, the OB-Gyne ward remained unfinished. On March 31, 2014, and May 27, 2014, Dr. Acuesta met with respondent and conveyed her observation on the slow pace of work and the lack of manpower. Due to these delays, Dr. Acuesta granted respondent an extension of up to June 27, 2014 to complete the project. Dr. Acuesta even issued a change order deleting the construction of the area for persons with disability (PWD) from respondent's scope of work just to meet his deadline.

On June 27, 2014, the project was still unfinished. TMC sent respondent another letter informing him that no further extensions would be given to him. Respondent took exception to the action undertaken by TMC. In reply, TMC informed respondent that there was nothing to terminate because the contract automatically ceased to exist after June 27, 2014.

Upon the assumption of Dr. Maria Isabelita M. Estrella (Dr. Estrella) as Medical Center Chief II of TMC, she conducted her own investigation and required Dr. Acuesta and Engr. Ramon T. Alfonso to submit verified reports about the project. The reports she received allegedly revealed that respondent had committed several violations that caused inordinate delays in completing the project. As a consequence, Dr. Estrella issued a Notice to Terminate and required respondent to submit his position paper.

Dr. Estrella created the Contract Termination Review Committee (CTRC) to assist her in the disposition of the case. On the basis of the recommendation made by the CTRC, Dr. Estrella rendered a decision dated November 14, 2014, the decretal portion of which reads as follows:

**WHEREFORE**, in view of the foregoing, the contract of Jaderock Builders with TMC for the renovation of its OB-Gyne wards, elevation of linen building, elevation of hospital ground, elevation of dormitory, and improvement of perimeter fence is hereby TERMINATED due to the said contractor's unjustified default. Upon termination thereof, a Blacklisting Order is likewise issued to disqualify Jaderock Builders from participating in the bidding of all government projects. Consequently, the performance security of Jaderock Builders is hereby declared forfeited.<sup>[6]</sup>

Respondent filed a Motion for Reconsideration but was denied in a Resolution<sup>[7]</sup> dated November 24, 2014.

On January 21, 2015, respondent filed an appeal with the DOH. The DOH, in a letter dated July 6, 2015, informed respondent that it could not rule on the appeal since it is Dr. Estrella who has direct supervision or administration over the implementation of the subject contract.

On August 28, 2015, respondent filed a Request for Arbitration with the CIAC for the resolution of his claim against TMC. Respondent's claims comprised of unpaid retention fee, return of performance cash bond, unpaid variation orders, damages arising from wrongful termination of the contract, damages arising from the blacklisting and attorney's fees.

On June 20, 2016, the CIAC through a three-member Arbitral Tribunal issued the Final Award<sup>[8]</sup> wherein it upheld the validity of TCM's termination of the contract, but ruled that respondent is still entitled to monetary claims representing a portion of the Retention Fee, the entire Performance Bond, a portion of the cost of Variation Orders Nos. 1 and 2, Compensatory Damages equivalent to the value of unreturned tools, Attorney's Fees, and half of the Arbitration Fees, totaling P2,840,323.95.

Aggrieved by the findings of the CIAC, TMC filed a petition for review with the CA. Respondent filed its comment on the petition.

On October 20, 2016, the CA rendered the assailed Decision denying TMC's Petition for Review and affirming the CIAC's Final Award. TMC filed a Motion for Reconsideration. However, pending resolution of the said Motion for Reconsideration before the CA, the CIAC and the respondent proceeded to execute and garnish TMC's public funds. TMC was constrained to file a petition for certiorari under Rule 65 of the Rules of Court with application for a Temporary Restraining Order and/or Writ of Preliminary Injunction before the CA questioning the said post-award proceedings, docketed as CA-G.R. SP No. 149187. To date, this petition is still pending with the CA.

In the assailed Resolution dated March 16, 2017, the CA denied TMC's Motion for Reconsideration. Hence, the instant petition anchored on the lone ground, that:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CIAC'S MONETARY AWARDS TO RESPONDENT DESPITE ITS PARALLEL FINDING AND CONFIRMATION THAT THE TERMINATION OF THE SUBJECT CONTRACT BY THE PETITIONER WAS VALID AND JUSTIFIED.<sup>[9]</sup>

The issue, in other words, revolves on the propriety of CIAC's act of awarding the following monetary awards in favor of respondent despite the alleged finding of breach (on respondent's part) of the Contract Agreement, thus: (a) a portion of the retention fee amounting to P33,127.64; (b) the entire performance bond amounting to P1,180,000.00; (c) a portion of the cost of variation orders numbers 1 and 2 amounting to P1,152,795.26; (d) compensatory damages equivalent to the value of unreturned tools amounting to P96,606.00; (e) attorney's fees amounting to P220,000.00 and (f) 50% of the arbitration fees amounting to P159,795.04.

"Executive Order No. 1008 entitled, 'Construction Industry Arbitration Law' provided for an arbitration mechanism for the speedy resolution of construction disputes other than by court litigation."<sup>[10]</sup> Realizing that delays in the resolution of construction industry disputes would also hold up the development of the country, Executive Order No. 1008 created the CIAC and vests upon it original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by the parties involved in construction in the Philippines.<sup>[11]</sup>

The competence of the CIAC to handle construction disputes was expressly recognized by Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, specifically Section 59<sup>[12]</sup> of the said law and was formally incorporated into the general statutory framework on alternative dispute resolution through R.A. No. 9285, the Alternative Dispute Resolution Act of 2004 (ADR Law),<sup>[13]</sup> specifically Chapter 6, Section 34<sup>[14]</sup> and 35.<sup>[15]</sup>

The CIAC has a two-pronged purpose: (a) to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts,<sup>[16]</sup> and, (b) to provide authoritative dispute resolution which emanates from its technical expertise.<sup>[17]</sup> As explained by the Court:

x x x The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are

conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment."<sup>[18]</sup> (Citation omitted)

Consistent with the foregoing purposes, the Courts accord CIAC's decision with great weight, respect and finality especially if it involves factual matters.<sup>[19]</sup>

Section 19 of Executive Order (E.O.) No. 1008, CREATING An Arbitration Machinery for the Philippine Construction Industry, approved on February 4, 1985, provides:

Sec. 19. *Finality of Awards.* — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

It is clear from the foregoing that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts - in respect of an arbitral award rendered under the CIAC.<sup>[20]</sup> The Court explained the rationale for limiting appeal to legal questions in construction cases resolved through arbitration, thus:

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction, x x x Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.<sup>[21]</sup> (Citation omitted)

Despite the clarity of the wordings of E.O. No. 1008 on the finality of awards - which state that the arbitral awards shall be final and inappealable except on questions of law which shall be appealable to the Courts - the said provision has evolved, such that even questions of fact and mixed questions of fact and law can be subject to judicial review. As explained by the Court:

x x x Later, however, the Court, in Revised Administrative Circular (RAC) No. 1-95, modified this rule, directing that the appeals from the arbitral award of the CIAC be first brought to the CA on "questions of fact, law or mixed questions of fact and law." This amendment was eventually transposed into the present CIAC Revised Rules which direct that "a

petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court." Notably, the current provision is in harmony with the Court's pronouncement that "despite statutory provisions making th§ decisions of certain administrative agencies 'final,' [the Court] still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law" and that, in particular, "voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review."<sup>[22]</sup>

Thus, questions on whether the CIAC arbitral tribunals conducted their affairs in a haphazard and immodest manner that the most basic integrity of the arbitral process was imperiled<sup>[23]</sup> are not insulated from judicial review. Thus:

x x x We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) 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; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) 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. x x x<sup>[24]</sup> (Citation omitted).

TMC failed to show that any of these exceptions exist in the instant case. Rather, TMC sought review of the CA's affirmance of the CIAC's Decision with respect to the monetary awards it granted in favor of the respondent despite the latter's alleged breach of contract. Thus, two issues need to be probed — the issue of breach and, the issue on monetary awards.

There is no problem with the issue of breach as this is essentially a factual matter. Relying mainly on the findings and conclusion of the CIAC, the CA affirmed the ruling of the CIAC that respondent committed a breach of the "Contract Agreement." Hence, there was a justifiable ground for TMC to terminate the said contract. The CA ruled that by respondent's own admission, he only accomplished 74.27%<sup>[25]</sup> of the entire project which means that there was indeed a negative slippage of more than 10% in the completion of the work. This is clearly a ground for the termination of the contract pursuant to the provisions of paragraph III (A)(2) of the Guidelines on termination of Contracts under the Revised Implementing Rules and Regulations of Republic Act No. 9184. The CA also considered as ground to terminate the contract the failure of respondent to comply with the valid instructions of TMC resulting in the former's failure to complete the project, such as: (a) instruction to augment its workforce in order to expedite the project; (b) instruction to provide warning signs and barricades at the project sites; (c) to stockpile in proper places and removal